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1. The appointment of a curator to the estate of an absentee is authorized by Articles 50, 52 and 53 C. C. *Wilson v. Smith*, 368.

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ACTION.

1. The pititory action can only be maintained by one in whom the legal title is vested, or by his legal representative. *Caze v. Robertson*, 232.
2. Although no real action would lie in Louisiana for lands situated in Mississippi, yet a suit brought to recover the proceeds of those lands, from a defendant domiciliated in Louisiana, would fall within the jurisdiction of our courts. *Edwards v. Ballard*, 362.
3. Where a petitory action has been brought to recover land sold under an execution, defendants should offer in evidence the record and judgment in the suit under which the execution issued. *Delespare v. Warner*, 413.
4. But where it is shown by the execution, and Sheriff's return, and the notices served, that the property in controversy has been sold, and the defendant put in possession as owner, and that a part of the price has been applied to the credit of plaintiff, he cannot bring a petitory action and ignore the existence of the sale, and treat the proceedings as having no existence; he must resort to an action of nullity to set aside the sale, if it be irregular or illegal. *Ibid*.
5. In an action for trespass, the defendant cannot put the plaintiff upon proof of title; possession alone is sufficient to support the action. *Gardiner v. Thibodeaux*, 732.
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APPEAL.

1. The failure of the appellant to file the transcript of appeal on the last judicial day, will not be excused on the ground of the Clerk's office being closed earlier than usual; in the absence of proof of the time of day when the attempt was made to file it, the presumption being that it was after business hours. *Buckley v. Lacroix*, 29.
2. An appeal will lie from an interlocutory order dissolving an injunction in accordance with the provisions of Articles 307 of the Code of Practice, when the facts show that such an order will work irreparable injury to the plaintiff in injunction. *White v. Cazenave*, 57.
3. Article 566 of the Code of Practice allows an appeal in all cases where an interlocutory order may work an irreparable injury. *Held*: That an order which necessarily compels a party, in order to protect his rights, to institute another suit for the same cause of action, is one from which an appeal will lie under this Article of the Code of Practice. *Ibid*.
4. When an appeal is taken from an *ex parte* order, under Article 307 of the Code of Practice, dissolving an injunction, the necessary consequence of maintaining the appeal is to reverse the order dissolving the injunction. *Ibid*.
5. Where an appeal has been taken by the defendant and warrantor, and the defendant alone files an appeal bond, it is presumed that the warrantor has abandoned his appeal, and in such a case the plaintiff cannot complain, as he has no judgment against the party called in warranty. *Wood v. Harrell*, 61.
6. Objections to the sufficiency of the security on the appeal bond, should be made in the court below. *Ibid*.
7. No judgment having been rendered in favor of the plaintiff against the warrantor, there can be no objection to the warrantor signing, as surety, the appeal bond given by defendant. *Ibid*.
8. The law does not make it absolutely necessary for the Clerk to affix the seal of the court, to his certificate attached to the transcript of the record. *Ibid*.
9. When the record does not show that the amount in dispute is over \$300, and the *hiatus* is not supplied by an affidavit, the appeal will be dismissed. *Succession of Broom*, 67.
10. Where the amount sued for was over three hundred dollars, but before judgment was rendered in the lower court, the plaintiff entered a *remittitur*,

APPEAL (*Continued*).

which reduced it to less than three hundred dollars—*Held*: That an appeal in such a case will be dismissed, it not being appealable in amount.

Wolf v. Munzenheimer, 114.

11. An interlocutory order upon a party to a suit, to produce on a given day and hour the books named, and file the same with the Clerk, is not such an order as will work an irreparable injury, and consequently, it cannot be appealed from.

Horton v. Thornhill, 142.

12. When the under-tutor having intervened in a suit against the tutor for a debt of the minor, prosecutes an appeal from a judgment against the tutor, the appeal will be dismissed if the tutor is not made a party to it.

Moodie v. Cambot, 153.

13. When the appeal is from a judgment in favor of the defendant, in a representative capacity, the appeal is defective and will be dismissed if the appeal bond is made in favor of the defendant without mentioning his representative capacity.

Clark v. Hébert, 183.

14. The appellee cannot bring up the appeal when the appeal was granted on motion, and the appellant filed no appeal bond, the appeal thus taken being incomplete without a bond.

Brand v. West, 187.

15. It is too late after the delay has expired for the return of an appeal, to file in the lower court a second appeal bond to supply omissions in the first.

Dugas v. Truxillo, 201.

16. The appeal will be dismissed by the court *ex officio*, when it appears that the judgment appealed from was rendered in a suit by attachment, and the record does not show that any property or credits of the defendant were attached.

Robinson v. Miller, 222.

17. A *suspensive* appeal does not lie from a judgment, removing from office the liquidator of the affairs of a partnership.

State v. Judge Second District Court, 240.

18. Where an appeal is taken by the defendant in a suit, brought by the city to recover a tax or license less than \$300 under a city ordinance, it is the duty of the defendant to bring up with the record the ordinance alleged to be illegal or unconstitutional, otherwise the case presents nothing for the decision of the court and the appeal will be dismissed.

New Orleans v. Boudro, 303.

19. An appeal will be dismissed when all the parties interested in maintaining the judgment appealed from are not made parties.

Cummings v. Erwin, 315.

20. An agreement by the parties to submit the report of experts and the whole matter in controversy, without argument to the court, does not deprive either party of their right of appeal from any judgment that may be rendered against them.

State v. Judge Fifth District Court, 323.

21. The appeal will be dismissed when it is made to appear, in the Supreme Court, that the appellant had voluntarily executed the judgment after taking his appeal.

White v. Ramsey, 329.

22. The State has the right to appeal, provided it is limited to the class of cases found in the precedent, to-wit: those where the indictment has been

APPEAL (*Continued*).

- quashed before a trial, or held bad upon a demurrer; and where it purports to charge an offence punishable with death or imprisonment at hard labor. *State v. Ross*, 364.
23. An appeal will not lie from an interlocutory decree overruling the exception that the petition discloses no ground of action. *Moore v. Gordon*, 388.
24. An appeal will not be dismissed because the warrantor has not been made a party to the appeal, where the defendant has abandoned all right of appeal against his warrantor. *Scuddy v. Shaffer*, 569.
25. On appeals in criminal cases, the court will take cognizance only of unmixed questions of law. *State v. Ward*, 673.
26. In criminal cases the parties have not the right to require the Clerk to take down the evidence and certify it to the Supreme Court, and the court will not take notice of the facts thus taken down, although certified both by the Clerk and the Judge of the inferior court. *Ibid.*
27. A question of fact, of which the appellate court cannot take jurisdiction, is necessarily involved in determining whether the prisoner had used due diligence in procuring the attendance of his witness. *Ibid.*
28. An interlocutory order dismissing a call in warranty is one calculated to work an irreparable injury, and consequently, may be appealed from. *Young v. Chamberlin*, 687.
29. Where a party as third opponent, claiming a privilege upon the proceeds of a sale over the seizing creditors, appeals from the judgment rendered against him, the appeal will be dismissed if all the seizing creditors are not made parties to it. *Taylor v. Calloway*, 688.
30. Where the citation of appeal has been improperly served on the appellee's counsel, the appellee being a resident of the State, it is not a fault imputable to the appellant, for which the appeal may be dismissed. *Jones v. Capperton*, 698.
31. Where the order of appeal has been obtained, the appeal bond given, and the transcript filed in due time, a defective service of citation may be remedied by a new service, although more than twelve months have elapsed since the judgment of the lower court was rendered. *Ibid.*
32. The appellant will not be allowed to amend the appeal bond in the Supreme Court. *Crawford v. Alexander*, 708.
33. He is not entitled to relief even when it is shown that the omissions in the bond were attributable to the Clerk of the court who filled up the blanks in the bond; in doing this, the Clerk will be regarded as not acting in his official capacity, but as the mere agent or scribe of the appellant. *Ibid.*
34. Where the judgment appealed from was rendered against the defendant, both personally and in a representative character, and the appeal bond is given in the representative capacity *exclusively*, the appeal will be dismissed. *Ibid.*
35. An appeal from a judgment rendered on a written consent signed by the attorneys of the parties to the suit, will be dismissed when it is not pretended that the action of the attorneys was fraudulent, or that they were not employed in the suit. *Lallande v. Jones*, 714.

APPEAL (*Continued*).

36. The proper construction of Art. 593 C. P. is that the tutor of a minor, like every other person who is *sui juris*, can only appeal within the year which follows the signature of the judgment; but the minor whose interests are affected by a judgment, has a year after attaining the age of majority, in a case where no appeal has been previously taken, to deliberate whether he shall appeal from it or not. *Préjean v. Robin*, 788.
37. An appeal will lie from an interlocutory order on a party to deposit in court a sum of money, the right to which is in contestation between the other parties to the suit. *Succession of Thompson*, 810.

See PRACTICE—*Noland v. Bemiss*, 49.

See SEIZURE AND SALE—*Lombas v. Robichaux*, 105.

See JUDGMENT—*Love v. McComas*, 201.

Tuliaferro v. Steele, 656.

See CRIMINAL LAW—*State v. Rentford*, 214.

See SALE—*Weems v. Ventress*, 267.

See PRACTICE—*Skiff v. Carpratte*, 801.

See INJUNCTION—*Knabe v. Fernal*, 847.

See SUCCESSIONS—*Succession of Hughes*, 863.

ARREST.

1. The 9th section of the Act of 1855, repeals the Acts of 1840 and 1847, modifying the 212 Art. of the Code of Practice, relative to the arrest of debtors about to leave the State, but expressly declares that the Act is not intended to repeal the provisions of the C. P. on the subject. *Tallamon v. Cardenas*, 509.
2. The provision of the 3d section of the Act of 1855, that no non-resident shall be arrested in this State except he has absconded from his residence, must give way to the 212th Art. C. P. in the case of a foreign debtor about permanently leaving the State. *Ibid*.
3. It is not necessary to state in the affidavit for a writ of arrest, where the defendant resides or has his domicile. *Hanney v. Bohner*, 859.
4. If the case comes within the exception in favor of non-residents, the defendant may plead the exception, and in proof of it, the proceeding in arrest will be set aside, if it was not alleged in the affidavit that the defendant had absconded from his residence. *Ibid*.

ASSESSMENT.

See TAXES, &c.

ATTACHMENT.

1. An affidavit to obtain an attachment, that the plaintiff really believes and has just grounds to apprehend that the defendant *may depart* from the State, &c., is insufficient. The affidavit must be positive as required by Art. 242 of the Code of Practice. *Reding v. Ridge*, 36.
2. A creditor whose debt has been secured by a conveyance of property to a trustee with authority to sell, and pay the debt, cannot claim such property as owner; and when attached, cannot set aside the attachment, upon giving bond, and take possession of it during the pendency of the litigation. *Hughes v. Klingender*, 52.

ATTACHMENT (*Continued*).

3. Such a conveyance would only give him the right to enforce the execution of the trust, and make him a creditor with a privilege. *Ibid.*
4. Where plaintiff sues out an attachment, and a third party intervenes claiming the goods attached as vendor, having the right of stoppage *in transitu*, and bonds the property seized—*Held*: That if he fails in his intervention, although his bond may not be made in conformity to law, he and his surety are nevertheless bound to satisfy any judgment that may be obtained against the defendant. *Emanuel v. Mann*, 53.
5. In such a case, the return of *nulla bona* upon an execution issued against the defendant, is sufficient to render the surety upon the bond of the intervenor liable. *Ibid.*
6. A judgment by default is properly rendered against the defendant in an attachment suit, where the curator *ad hoc*, after exceptions filed by him have been overruled, fails to file an answer. *Story v. Jones*, 73.
7. The fact that no answer was filed by the curator *ad hoc*, will not vitiate the subsequent proceedings, and the final judgment rendered on such default cannot be annulled upon the same allegations that were passed upon by the exceptions filed by the curator *ad hoc*, when more than two years had elapsed from the rendition of the judgment. *Ibid.*
8. When it appears that there was sufficient time for the curator *ad hoc* to have corresponded with the absentee, if he was able to ascertain his post-office, it will be presumed that he did his duty in this respect. *Ibid.*
9. An affidavit for an attachment sued out upon a debt not due is defective, if it does not state that the debtor is about to remove his property out of the State before the debt becomes due. *Kleinwort v. Klingender*, 96.
10. The interest of a non-resident in the property of a foreign commercial firm, may be attached for a debt due to a citizen of this State. *Frost v. White*, 140.
11. When parties intervene, and bond property attached, they are estopped from denying the fact that there is any property attached, having by the act of giving bond judicially admitted it. *Ibid.*
12. Accommodation acceptors are not creditors of the drawer of a draft accepted by them, until after it has matured, and they have been obliged to pay it, and an attachment issued by them before maturity, is not rendered valid by subsequent payment of the draft, which makes them creditors of the drawer. *Todd v. Shouse*, 426.
13. An attachment must stand or fall according to the state of facts existing at the date of its issuing, and cannot be cured by a subsequent event. *Ibid.*
14. Where the Federal Court was resorted to on a false allegation of the citizenship of the parties, in order to obtain possession of property by attachment, and the proceedings were then dismissed and simultaneously process of attachment sued out from a State Court, on the affidavit that the defendant in the attachment, who was represented in the Federal Court to be a citizen of Louisiana, was a non-resident—*Held*: That the allegation of the non-residence of the defendant being at direct variance with the allegation previously made by the same party in the Federal Court, the attachment could not be maintained. *Gilbert v. Hollinger*, 441.

ATTACHMENT (*Continued*).

15. An attachment will not lie against the property of a succession in this State; the creditor is bound to provoke an administration of the estate in pursuance of law, to collect his debt.

Cheatham v. Carrington, 696.

16. A valid attachment of an accepted draft filed in a suit may be made, by citing as garnishee the Clerk of the court in whose custody the draft is, and proving by his answers to interrogatories his possession of the draft.

Ealer v. McAllister, 821.

17. It is too late after an answer to the merits, to move to set aside an attachment, on the ground of the insufficiency of the attachment bond, when it is not alleged that the surety had become insolvent since signing the bond.

Ibid.

18. A judgment creditor has no right to proceed against the property of his debtor by process of attachment.

Frellsen v. Stewart, 832.

See JUDGMENT—*Love v. McComas*, 201.

See APPEAL—*Robinson v. Miller*, 222.

See PARTNERSHIP—*Key v. Box*, 497.

See PRACTICE—*Wright v. White*, 583.

Shiff v. Carprette, 801.

See CONFLICT OF LAWS—*Hughes v. Klingender*, 845.

ATTORNEYS AT LAW.

1. The warrantor is not liable for the fees of the attorney employed by the party evicted.

Heirs of Sarpy v. City of New Orleans, 311.

2. Attorney's fees cannot be recovered as either costs of the suit or as damages, under Art. 2482 of the Civil Code.

Ibid.

3. Where, in an act of mortgage, it was stipulated that, in the event of the note not being paid at maturity, the attorney's fees for collection should be paid by the debtor, but it was shown that the suit for the collection of the note was unnecessary—*Held*: That the fees could not be secured by the creditor.

Alexandrie v. Saloy, 327.

See JUDGMENT—*Marcel v. Manouvrier*, 3.

See SEIZURE AND SALE—*Simpson v. Lombas*, 103.

See APPEAL—*Lallande v. Jones*, 714.

See EVIDENCE—*Succession of Grant*, 795.

See WARRANTY—*Late v. Armorer*, 826.

See SUCCESSION—*Succession of Hughes*, 863.

AUCTIONEER.

See SALE—*Schwartz v. Flatboats*, 243.

AUTHENTICATION OF RECORD.

1. A record of judicial proceedings in another State, is sufficiently authenticated when certified to by a Judge, before whom, it appears from the record itself, all the proceedings in the case were had, and who states in the certificate that he is one of the Judges of the court, and that all the Judges of said court are equal in authority, and each one is authorized to sign such a certificate.

Orman v. Neville, 392.

BANKS AND BANKING.

1. The property banks in Louisiana furnish an exception to the rule, that the creditor who holds under two mortgages of unequal rank on the same property, and who has caused the property to be sold to satisfy his junior mortgage, cannot be allowed to sell it a second time to satisfy his senior mortgage. The property mortgaged for the subscription to the stock of the bank is liable in the hands of a third possessor, although it has been previously sold at the instance of the bank, to enforce the payment of the stock loan secured by the same mortgage. *Haynes v. Harbour*, 237.
2. A judicial sale to enforce a mortgage for the security of a stock loan by a bank, does not release the mortgage for the security of the subscription of stock. *Haynes v. Pipes*, 248.

See BILLS AND NOTES—*Vanbilber v. Bank of Louisiana*, 481.

BILL OF EXCEPTIONS.

1. A statement by the Clerk, in his minutes of the testimony taken on the trial, that certain evidence was objected to, does not dispense with the necessity of a bill of exceptions to the reception of the evidence. *Graugnard v. Lombard*, 234.
2. Where the counsel in a cause have not argued points made in their bills of exception, they will be considered as waived. *Williams v. Bridge*, 721.

See SUPREME COURT—*Murphy v. Simonds*, 322.

See JURY AND JURORS—*State v. Bunger*, 461.

See PRACTICE—*Davis v. Millaudon*, 808.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. The notary who protested a bill of exchange certified that he went to the office of the acceptors of the bill, in order to demand payment of it, and found the office shut, and, on enquiry, could not find the acceptors nor any one who could pay the bill.—*Held*: That it will be presumed in the absence of proof to the contrary, that the notary had the draft with him, and that he went to make the demand within the usual office hours. *Bank of Louisiana v. Satterfield*, 80.
2. A notice sent to the Post-Office where an endorser usually receives his letters, at the time the protest is made, is sufficient, although there be another Post-Office nearer his residence, at which he has not been in the habit of receiving his letters. *Grieff v. McDaniel*, 160.
3. It cannot affect the negotiability of a note, that its consideration is to be realized in future, or that from some contingency it may never be realized. *Sadler v. White*, 177.
4. If the consideration of the note had not failed at the time of its transfer, the maker cannot set up as a defence, that the holder knew that there might be offsets against it. *Ibid*.
5. The possession by the drawee of a draft drawn by a planter upon his merchant or factor, in favor of a third person, is *prima facie* proof of the draft having been paid by the drawee. *Succession of Penny*, 194.
6. Where a negotiable note was made payable at the office of a mercantile firm in New Orleans, and a remittance made by the maker to such firm on

BILLS OF EXCHANGE AND PROMISSORY NOTES (Continued).

- account of the note—*Held*: That the remittance was not a valid payment of the note, the firm at whose office the note was payable not being the agents of the holder. *Rowland v. Levy*, 223.
7. Where a note bears interest from maturity, the interest begins to run from the day of payment specified, without allowing for days of grace. *Weems v. Ventress*, 267.
8. A waiver of protest by an endorser is not a waiver of the notice of non-payment. *Ball v. Greaud*, 305.
9. An accomodation endorser is entitled to notice, as any other endorser. *Ibid.*
10. Where a promissory note has been transferred by a verbal contract, without the endorsement of the payee, such verbal transfer cannot have the effect of an endorsement and give the paper a character of negotiability. *Scott v. McDougall*, 309.
11. Bills of exchange drawn in a foreign country, and payable in another foreign country, although drawn against a shipment made to the city of New Orleans, are governed by the laws of the country where they are drawn. *Kuenzi v. Elvers*, 391.
12. In the absence of proof in a suit brought upon such bills here which have been protested for non-acceptance and payment, the laws of the country where such bills were drawn with regard to bills drawn there upon other foreign countries, must be presumed to be the same as our own, and ten per cent. damages will be allowed. *Ibid.*
13. The acceptor of a bill has no right to inquire into the consideration between the drawer and payee, and between the latter and a subsequent endorsee. *Smith v. Adams*, 409.
14. Not even accommodation acceptors, and that to the knowledge of payee, have a right to plead in compensation or reconvention a debt due by payee to the drawer of a draft. *Ibid.*
15. In a suit brought against the drawer of a *bill of exchange*, it is not necessary, to constitute a waiver of want of notice, that an express promise be made to pay the bill absolutely,—it is sufficient, if by reasonable intentment the language imports or implies a promise to pay it; as a promise to pay if the costs are thrown out. *Zacharie v. Kirk*, 433.
16. The holder of a note made payable to the maker's own order, *by him endorsed*, and secured by a notarial and authentic act of mortgage, may recover without any authentic evidence of transfer further than that contained in the act itself. *Rice v. Davis*, 435.
17. Checks are assimilated to bills of exchange, and the same rules govern both with regard to the necessity of demand, protest, and notice of protest. *Succession of Kercheval*, 457.
18. The acceptance of a bill of exchange admits the genuineness of the drawer's signature, and where an acceptor has paid to a *bona fide* holder of a forged draft or bill, having no notice of the forgery, he cannot recover back the money paid. *McKleroy v. Bank of Kentucky*, 458.
19. But where a party becomes the holder of such a draft before it has been accepted, and when the loss had already attached, it was accepted, and

BILLS OF EXCHANGE AND PROMISSORY NOTES (*Continued*).

- paid, and the acceptors, immediately upon ascertaining the fact of the forgery, gave notice of this fact to the holders—*Held*: That such a case is an exception to the general rule, and the acceptors are not estopped from proving the forgery and recovering the money they had paid through error. *Ibid*.
20. A bank is liable to the payees of a check made payable to their order, when the check is paid on a forged endorsement made by the collector of the payees, who receives the check in payment of a bill of merchandise intrusted to him for collection by his employers.
Vanbibber v. Bank of Louisiana, 481.
21. Where at the maturity of a draft, the firm on which it was drawn in the city of New Orleans had no place of business, and could not be found there, and had then ceased to exist as a firm—*Held*: That a protest was unnecessary to bind the drawer.
Helme v. Middleton, 484.
22. When the plaintiff is the payee of the note sued on, he may strike out or not his special endorsement of the note, and is not bound to show a transfer back to him of the note.
Cooper v. Cooper, 665.
23. Where the knowledge of the failure of the consideration of a note is brought home to the agent of the party to whom the note is transferred in settlement of a debt due the principal by the payee, at the time of the transfer, it will be considered notice to the principal.
Cummings v. Harsabrauch, 711.
24. A judgment by default taken in a suit on a note, by a party claiming the ownership of it by the blank endorsement of the payee, does not relieve the plaintiff from the necessity of proving the endorsement.
Collins v. McDonald, 735.
25. In a suit against the maker of a promissory note, in confirming a judgment by default, it is not necessary that the signature of the maker should be proved.
Kearney v. Fenner, 870.

See HUSBAND AND WIFE—*Raiford v. Wood*, 116.

Lee v. Cameron, 700.

See EVIDENCE—*Price v. Emerson*, 141.

See OFFICER—*Emerling v. Graham*, 389.

See ATTACHMENT—*Todd v. Shouse*, 426.

Euler v. McAllister, 821

See PRINCIPAL AND AGENT—*Parlange v. Faurès*, 444.

See PLEDGE—*Diz v. Tully*, 456.

See PARTNERSHIP—*Bogereau v. Guéringer*, 478.

See NOVATION—*Helme v. Middleton*, 484.

See MORTGAGE—*Bowman v. McKleroy*, 587.

See PRINCIPAL AND SURETY—*Sheldon v. Reynolds*, 692.

See SEIZURE AND SALE—*Lassiter v. Bussy*, 699.

See EVIDENCE—*Andrew v. Keenan*, 705.

BONDS.

1. Where the condition of the bond in a criminal case was that the accused "should personally be and appear before the District Court at its next term to answer certain charges brought against him, and should not depart without the leave of the court until the final trial and conviction or acquittal of the accused, the responsibility of the security on the bond is at an end when a verdict of guilty is found against his principal.
State v. Wilson, 446.

BONDS (Continued).

2. The accused being then present in court, is, after the conviction, in the custody of the Sheriff, and the security cannot be made liable on such a bond because the accused afterwards made his escape. *Ibid.*
3. Where the defendant was indicted for an assault with an attempt to commit a rape, and after having pleaded to the indictment, was released upon a bond, in which he and his securities bound themselves that he should appear and answer to the charge of rape—*Held*: That such a condition, under the circumstances of this case, vitiated the bond. *State v. Forno*, 450.
4. When a bail bond recites the finding of a Grand Jury, the parties to it are estopped from denying its existence or contents. *Taliaferro v. Steele*, 656.
5. If the bond, in specifying the charge in the indictment, does not follow the words used in the statute and the indictment, and the warrant of arrest is not signed by the Clerk of the court, they are objections patent upon the face of the record, and when in such a case judgment is rendered on the bond, the remedy is by appeal, and not by an action of nullity. *Ibid.*
6. When a judgment of forfeiture has been rendered on a bail bond, in which there is no mention of any offence for which the principal was answerable, and it does not appear from the record that there was any indictment against him, the judgment will be reversed. *State v. Derosier*, 736.
7. Where the facts show that the Sheriff was authorized by the committing magistrate to take the bond of an accused, and the sureties on the bond were approved by him, and the bond is clothed with the formalities required by law, the sureties on it will be bound, on the failure of the principal to appear. *State v. Badon*, 783.
8. In calling upon the sureties on a bail bond to produce in court the body of the principal, the words "*instanter*" and "in open court" are not sacramental terms; it is sufficient when the accused has failed to appear, after having been called at the courthouse door, to call upon his sureties. *Ibid.*

See PRESCRIPTION—*Union Bank v. Bradford*, 159.

See APPEAL—*Dugas v. Truzillo*, 201.

See JUDGMENT—*Love v. McComas*, 201.

See PRACTICE—*State v. Fuller*, 726.

See SHERIFF—*Succession of David*, 730.

BOUNDARY.

1. Plaintiff and defendant purchased on the same day contiguous lots of ground, from the same vendor, with valuable improvements thereon, the buildings on the one lot being divided from the buildings on the other lot by a wall in common; both acknowledged possession of the lots, &c., thus sold; and both acts of sale referred to the same plan for limits. In a contest of boundary between plaintiff and defendant, a survey was ordered, which showed that the plan referred to was erroneous, and that plaintiff, to get the quantity of land called for in his title, made in accordance with this erroneous plan, would encroach upon the improvements of defendant.—*Held*: That as the buildings designated in the act of sale appear to constitute by far the most valuable part of the thing sold, they must control an alleged measure of invisible lines falsely stated in the plan referred to, by a careless or incompetent surveyor. *Riddell v. Jackson*, 135.

BOUNDARY (*Continued*).

2. In an action of boundary, the costs should be equally divided between the parties, unless there is proof of a demand on one side, and refusal on the other, to settle the boundary amicably. *Tircuit v. Pelanne*, 215.
3. In a contest of boundary between two parties who have purchased adjoining tracts from a common vendor, the line which their vendor had caused to be run as the dividing line between the two tracts before he sold them, will be recognized as the dividing line between the two parties deriving title from him. *Lebeau v. Bergeron*, 489.
4. Under such circumstances, if either party has not the quantity of land called for by his title, he must seek it from his vendor, and not from the proprietor of the adjoining tract, who does not claim or possess beyond the line established by their common vendor. *Ibid.*
5. In such a case, the plat of a survey, and the *procès verbal* of a parish surveyor, are admissible in evidence after the death of the surveyor, to show that the line was run by him at the request of the common vendor, and that he considered it the boundary of the two tracts which had been divided by him, and also to show that the parties bought the land in accordance with the lines established by the survey, and that the defendant took possession and cultivated his tract according to it. *Ibid.*
6. In an action of boundary, a division line which has been long established by surveyor's marks, a canal and fence, and under which both parties bought, and which is referred to in the act of sale, will be taken as the true line, in preference to a new one, which gives to one of the parties a larger boundary. *Ibid.*

See RES JUDICATA—*White v. Purnell*, 235.

BROKER.

See PLEDGE—*Diz v. Tully*, 456.

See PRINCIPAL AND AGENT—*Barrière v. Peychaud*, 376.
Parlange v. Faurès, 444

CASES AFFIRMED, OVERRULED, &c.

1. The decision in the case of *Yeatman v. Crandell*, 11 An. 220, re-affirmed. *Wallace v. Shelton*, 498.
2. Decision in *Harper v. Stanbrough*, 2 An., 377, re-affirmed. *Wales v. Daniell*, 578.
3. The decision in the case of the *City of New Orleans v. E. J. Hart & Co.*, ante p. 803, affirmed. *New Orleans v. Crescent*, 804.
4. The decision in the case of the *City of New Orleans v. Poutz*, ante p. 853, affirmed. *New Orleans v. Locke*, 854.

See PARTNERSHIP—*Pitman v. Robicheau*, 108.

See EVIDENCE—*Edwards v. Daley*, 384.

See CONSTITUTIONAL LAW—*New Orleans v. Poutz*, 853.

CLERKS OF COURT.

1. Where it was alleged that the Clerk retiring from office had forfeited his fees by failing to file an explicit fee bill within the term prescribed by the statute—*Held*: That the allegation, although of a negative character, must be proved. *Barrow v. Robichaux*, 207.

CLERKS OF COURT (*Continued*).

2. The law requiring that the Clerks shall endorse upon or annex to all writs of *fiery facias* issued by them specific bills of the taxed costs, is directory, and no penalty is incurred for the non-observance of the requirement.
Ibid.
3. Where, during the pendency of charges against him, the Clerk of a court resigns his office, the appointment made of a Clerk *pro tempore* terminates with the resignation.
Ruddock v. Mallory, 314.
4. A vacancy in the office thus occurring, may be filled under Art. 79 of the Constitution, by the Judge presiding in term time where the vacancy occurs, in place of the Judge of the District in which the court is held.
Ibid.
5. When a Clerk refuses or neglects to issue citation, on the demand of a plaintiff or his attorney, and is specially informed that the cause of action will be barred by prescription within a short period, unless interrupted by service of citation, he renders himself and his sureties liable for the debt, or demand, as soon as prescription is accomplished, in consequence of his neglect to perform his official duty.
Anderson v. Joiett, 614.
6. In a suit brought against a Clerk and his sureties, to render them liable for such neglect, they cannot plead, by way of defence, that the party who had acquired the right to prescription through their neglect will not plead it, the presumption is that he will, and the burden of proof is on them to rebut it.
Ibid.

COMMON CARRIERS.

1. A bill of lading of gas pipes contained this clause, "not accountable for leakage, rust or breakage, if properly stowed."—*Held*: That the burden of proof in such a case is upon the carrier to show proper stowage.
Edwards v. Cahauha, 224.
2. The common carrier owes indemnity to the shipper of goods for delay in the transportation, and legal interest upon the price of the goods during the period of the delay may be recovered. as the measure of such indemnity.
Murrell v. Dixey, 298.
3. The shipper cannot recover, as damages, the premium paid by him for insurance upon the goods, while the vessel was lying in a port to which she was driven for repairs, by reason of her unseaworthiness. The carrier in such case becomes the insurer.
Ibid.
4. Where a boat is engaged to take freight on the Mississippi River, and the exact time of the delivery is not stipulated, a reasonable time must be allowed on the arrival of the boat for the transportation of the freight to the bank of the river.
Barstow v. Murison, 335.
5. The clause "The freight payable after receipt of the whole in good order," contained in a bill of lading, has reference to the levee as the place of delivery and receipt, while the words "in good order" relate to the external appearance of the things received.
Gauche v. Storer, 411.
6. Where the owners of a steamboat acknowledge to have received into their custody property which they agreed to deliver to a particular house, and

COMMON CARRIERS (*Continued*).

they failed to do this, but delivered it to another house, the burden of proof rests on them to show that they made this delivery for the account of the shippers. *Gilkinson v. Steamboat Scotland*, 417.

7. Where goods are delivered into the possession of a common carrier, it is for him to show that he used due care for their preservation, for the shipper is not supposed to be present during their transportation, and the goods are in the custody of the owners of the vessel and their agents.

Tardos v. Ship Toulon, 429.

8. Article 3204 of the Civil Code gives a privilege on the ship for damages due to freighters for the failure in delivery of goods which they have shipped, or for the reimbursement of damages sustained by goods through the fault of the captain or crew. *Ibid.*

9. The captain and owners of a vessel are liable for the acts of the stevedores employed by them to load their vessels.

Rochereau v. Bark Hausa, 431.

10. Where the master of a boat contracts a debt on account of the boat, the creditor has a right to sue either him or the owners of the boat, or both simultaneously. *Zacharie v. Kirk*, 433.

11. In order to relieve the owners of vessels from responsibility, there must be a delivery on the wharf to some person authorized to receive the goods, or some act must be done which is an equivalent to a delivery.

Sleade v. Payne, 453.

12. In order to constitute a delivery, there must be a notice given to the consignee, and a reasonable time given him to make the usual and necessary preparations to receive the goods. *Ibid.*

13. The manner of delivering the goods, and consequently the period at which the responsibility of the master and owners will cease, depend upon the customs of particular places, and the usage of particular trades. *Ibid.*

14. When goods shipped on freight are damaged by water, so as to be valueless and unsalable, the shipper is not bound to send them to auction to be sold, as a prerequisite to the right of action.

Elkin v. Steamship Co., 647.

15. Either party has a right to require, in such case, a sale by auction, and the expenses will form part of the costs. *Ibid.*

See DAMAGES—*Porée v. Cannon*, 501.

See PRESCRIPTION—*Pilkin v. Rousseau*, 511.

COMMUNITY.

1. Where the widow has caused an inventory to be taken of her deceased husband's estate, she has the privilege of renouncing the community, as long as the creditors have taken no steps to compel her to accept or renounce.

Succession of Richardson, 1.

2. She cannot be charged as partner in the community as long as she has the right to renounce. *Ibid.*

COMMUNITY (*Continued*).

3. The Act of 1844, which gives to the survivor the usufruct of the community property, does not dispense the party who claims the benefit of its provisions from having an inventory taken.

Saloy v. Cheznaidre, 567.

4. A widow in community who, before she has qualified as administratrix, or tutrix, stipulates in writing for the extension of a debt, and makes payments upon it, is presumed to have accepted the community, and her subsequent renunciation of it, on her qualifying as tutrix and administratrix, will not avail her in a suit brought upon the debt which she had acknowledged, to hold her liable for it as partner in the community. *Ibid*.

5. The doctrine of the case of *Downs v. Morrison*, 13 An. 379, in relation to the money of the wife received by the husband during the marriage, which constitutes a charge against the community, is applicable to the share of the husband, who, in the partition of the community, is entitled to a credit for his separate funds applied to the use of the community.

Coons v. Stringer, 726.

6. The fees of counsel employed by the wife to prosecute a suit for a divorce and a partition of the community property, must be paid by her out of her separate estate; the community cannot be held liable for them.

Tucker v. Carlin, 734.

7. The community cannot be allowed more than the actual cost of improvements made on the separate estate of one of the spouses, during the existence of the marriage, although the property had increased in value during its existence.

Succession of McClelland, 762.

8. One partner in the community will not be permitted to question the title of the other partner to property possessed by such partner prior to the existence of the community.

Ibid.

See SUCCESSIONS—*Cuillé v. Gassen*, 5.

See USUFRUCT—*Succession of Cardona*, 336.

See HUSBAND AND WIFE—*Joffrion v. Bordelon*, 618.

Johnston v. Pike, 731.

Morales v. Marigny, 855.

See SALE—*Winn v. Brown*, 642.

COMPENSATION.

See JUDGMENT—*Hereford v. Babin*, 333.

See PARTNERSHIP—*Key v. Boz*, 497.

CONFLICT OF LAWS.

1. A *cessio bonorum* in this State is not a peremptory bar to a suit upon a judgment rendered contradictorily with the ceding debtor in another State after the cession has been accepted here, even though the debt upon which the foreign judgment was obtained was put upon the debtor's bilan.

Scott v. Bogart, 261.

2. In those States where the common law prevails, when a commercial firm is sued, it is necessary that process should be served on each member of the firm, and effect will not be given in our courts to a judgment there rendered against one of the members who was not served with process and made no appearance in the suit.

Ibid.

CONFLICT OF LAWS (*Continued*).

3. An assignment of a vessel on the high seas in trust for the payment of particular creditors, by preference, made in another State, under whose laws it is valid between the parties, all of whom reside in that State, will protect such vessels, when they arrive in a port in this State, from attachment here, at the suit of a creditor of the assignor, whose debt was payable in the State where the assignment was made.
Southern Bank v. Wood, 554.
4. The validity of the assignment must be determined by the laws of the State where it is made. *Ibid.*
5. It is necessary, to give validity to a deed of gift made in another State, but designed to have effect in Louisiana, that it should be clothed with the formalities required by our law, and its effect will also be governed by the laws of Louisiana.
Tillman v. Mosely, 710.
6. The comity of nations extends only to enforce obligations, contracts and rights under those provisions of law of other countries which are analogous or similar to those of the State where the litigation arises.
Hughes v. Klingender, 845.
7. A contract executed in England, by which a ship was transferred to a trustee to secure the rights of a third person, the vendor retaining possession of the ship, cannot be enforced in this State to defeat rights already acquired by an attachment under our laws. *Ibid.*

See SLAVES—*Brown v. Raby*, 41.

See PRESCRIPTION—*Walworth v. Routh*, 205.

See WILLS—*Hughes v. Hughes*, 85.

See BILLS AND NOTES—*Kuenzi v. Elvers*, 391.

See MORTGAGE—*Atkinson v. Rogers*, 633.

See HUSBAND AND WIFE—*Eager v. Brown*, 684.

Morales v. Marigny, 855.

See MORTGAGE—*Bowman v. McKleroy*, 587.

CONSTITUTIONAL LAW.

1. When the title of an Act is simple, all those sections which are covered by it fulfill the requirements of Article 115 of the Constitution; and only those portions are held to be void for unconstitutionality, which are not covered by the title.
Williams v. Payson, 7.
2. The 11th section of the Act of the Legislature of 1855, which provides that whenever the District Attorney shall not attend, the Judge shall have power to appoint an attorney to prosecute on behalf of the State, (*pro tempore*.) is not a violation of Art. 83 of the Constitution of 1852, which requires that the District Attorneys shall be elected by the people.
State v. Boudreaux, 88.
3. The 8th section of the Constitution of the United States, which declares that Congress shall have power to regulate commerce, does not prevent the exercise of such power by the States, as far as is necessary for the police regulations of their domestic commerce, in regard to which Congress has not deemed it expedient to make any regulations.
Port Wardens v. Ship Martha J. Ward, 289.
4. The Act of the Legislature of 1855, relative to the Board of Master and Wardens, which provides for the payment of services actually rendered or

CONSTITUTIONAL LAW (*Continued*).

the tender of such services, is not a violation of the clause of the Constitution of the United States which gives to Congress the power of regulating commerce. *Ibid.*

5. The fees allowed to the Master and Wardens are in no sense imposts or duties on imports or exports. *Ibid.*

6. The 129th Article of the Constitution, which requires that the laws of this State shall be promulgated in the English and French languages, is not violated by section second of the Act of the Legislature of March 16th, 1859, entitled "An Act to change and regulate the terms of the District Courts in the Eighth Judicial District," which declares that the Act shall take effect from and after its passage.

State v. Judge Eighth Judicial District, 486.

7. There is no prohibition in the Constitution against the repeal of laws, in any form, in which the Legislature can give a clear expression of its will. *Ibid.*

8. An assessment for levee purposes is not a tax within the meaning of Art. 123 of the Constitution. *Wallace v. Shelton*, 498.

9. An Act of the Legislature authorizing the assessment of an annual tax on alluvial lands, "*specifically* upon each and every acre," for the purpose of building or making and repairing levees, is not in violation of the Constitution. *Ibid.*

10. The provision of the Act of 1855, organizing a Board of Port Wardens for the port of New Orleans, which allows such Port Wardens to demand from each vessel arriving from sea the sum of five dollars, *whether they be called upon to perform any services or not*, is not a charge imposed as a duty, without regard to a corresponding and equivalent benefit, and is not, therefore, unconstitutional. *Port Wardens v. Ship C. Morgan*, 595.

11. Art. 106 of the State Constitution, which declares that "*the press shall be free*," does not exempt capital invested in a newspaper from taxation.

New Orleans v. Crescent, 804.

12. The principle enunciated in the case of *Municipality No. 1 v. Wheeler & Blake*, 10 An. 745, to the effect, that an *ex post facto* law which does not relate to crimes and offences, and does not impair the obligations of contracts, nor divest vested rights, is not unconstitutional, reaffirmed.

New Orleans v. Poutz, 853.

See PILOT—*Williams v. Payson*, 7.

See NEW ORLEANS—*New Orleans v. Costello*, 37.

Merriam v. New Orleans, 318.

Hiestand v. New Orleans, 330.

See TAXES, &c., AND JUDGMENT—*Silby v. Leves Commissioners*, 434.

See CRIMINAL LAW—*State v. Peter*, 521.

See SLAVES—*Deshotels v. Soileau*, 745.

CONSTRUCTION, RULES OF.

1. Where two legislative Acts are approved on the same day, the rule of construction applicable to different sections of the same law will apply; the minute and particular provisions of one Act prescribing the salary of the Register of Voters in the city of New Orleans, are not repealed by a general grant of power in the other Act to the Common Council in relation to all city salaries. *St. Martin v. Orleans*, 113.

CONTRACTS.

1. Where one who has employed another for a limited time at a salary, discharges the employee before the expiration of the time, for a good cause, he is responsible to his employee for his services up to the time of the discharge. *Kessee v. Mayfield*, 90.
2. Mere insolvency is not sufficient to render a debt due, which, by its terms, is payable at a future day. *Kleinwort v. Klingender*, 96.
3. An actual surrender, either voluntary or forced, is required to annihilate the term fixed by the contract for the payment of a debt. *Ibid.*
4. An agreement was entered into by several commercial firms, by which they bound themselves for the term of three months, not to sell any India cotton bagging, except with the consent of the majority of them—*Held*: That it was a combination to enhance the price of the article, which is in restraint of trade and contrary to public order, and that the agreement could not be enforced in a court of justice.
India Bagging Association v. Kock, 168.
5. Where plaintiff received warrants for money due him on a contract, without objecting, or taking them under protest that they were not for the whole sum due, his endorsing the warrants will preclude his claiming afterwards that they were not drawn for a sufficient amount.
King v. New Orleans, 389.
6. A resolutive condition is implied in all commutative contracts, to take effect in case either of the parties do not comply with their engagements.
Dubois v. Xiques, 427.
7. The dissolution of the contract for non-compliance with its obligations, may be demanded by suit or by exception. *Ibid.*
8. A party is concluded by the first bill which he presents for work done under a contract. Without showing error he cannot be permitted to recover the items added to that bill since it was rendered.
Nicholson v. Pelanne, 508.
9. *A* conveyed to *B* a house and lot for the sum of \$5,500, which the purchaser obliged himself to pay to the seller in one year from the date of the contract, with the express agreement, however, that the purchaser, his heirs or assigns, should have the right to prolong the payment of the sum of \$5,500, indefinitely and at their will, on paying the vendor or his heirs or assigns, interest annually in advance, at the rate of seven per cent. per annum—*Held*: That such a contract is not a contract of sale, but one of "rent of lands," *rente foncière ou bail à rente*.
Sainet v. Duchamp, 539.
10. Where one renders services for continuous years to another on his promise to provide in his will for the party rendering such services, and he dies without making such provision, an action may be maintained for the value of the services.
Nimmo v. Walker, 581.
11. The promises in such a case having reference to the period of the promisor's death, prescription is suspended until that time. *Ibid.*
12. Where a promise to sell to two persons jointly, contains the stipulation that such purchasers are to furnish a reliable city acceptance by a certain time, or the contract shall be null and void, the tender of the accepted draft of one of the purchasers is not a performance of the stipulation.
Satterfield v. Keller, 606.

CONTRACTS (*Continued*).

13. A party seeking to compel the specific performance of a contract of promise to sell, must himself show a specific compliance with his own obligations.
Ibid.
14. When the obligation is conditional, the party to whom it is transferred by endorsement before maturity, is bound to prove the performance of the condition before he can recover on it.
Drawn v. Cherry, 694.
15. When a solidary co-debtor pays in discharge of the whole debt less than the whole amount of the debt, he cannot claim from his co-debtor reimbursement of his portion of the whole debt, but only of the amount paid.
Fuselier v. Babineau, 764.
16. Any convention to the contrary between the creditor and the co-debtor making the payment, produces no effect upon the rights of the co-debtor, who was not a party to such convention.
Ibid.
17. A party who has bound himself by a written contract to perform certain services for another, may sue for his services on a *quantum meruit*, where the contract has been violated and virtually annulled by the act of the other party.
Brown v. Bark Laura Snow, 848.

See DAMAGE—*Thompson v. Howes*, 45.

Gauthier v. Green, 788.

See CONFLICT OF LAWS—*Hughes v. Klingender*, 845.

CORPORATIONS.

1. A municipal corporation is not liable for damage done to private property, unless the act which caused the damage was done without the authority of law, or being authorized by law, was improperly or wantonly executed.
Bennett v. New Orleans, 120.
2. Where a municipal corporation was sued for an act of omission or nonfeasance, in not repairing a draining machine erected for public utility, by which neglect plaintiff's premises were overflowed, and his property damaged—*Held*: That as the act complained of involved the disbursement of the corporate revenues, it was a matter of discretion with the corporate authorities, and that if plaintiff was damaged, it was *damnum absque injuria*, and he was consequently without sufficient cause of action. *Held*, also: That a corporation in such a case may avail itself of this exemption from suit, under the plea of the general issue.
Ibid.
3. Where a public square is bounded on one side by private property, the owner cannot require that the town authorities, when the square is enclosed, should leave a space for a public way between the enclosure and the line of his property.
Leftwitch v. Town of Plaquemine, 152.
4. The qualifications of the members of the City Council cannot be inquired into in a suit to enforce a contract made by the Mayor, under a resolution of that body authorizing it.
Schwartz v. Flatboats, 243.
5. An ordinance of the City Council, ordering a blacksmith's shop to be closed as a nuisance, is authorized by law, and may be carried into effect by an injunction restraining the owner from continuing it.
New Orleans v. Lambert, 247.

CORPORATIONS (*Continued*).

6. The power of the municipal corporation to make contracts for the pavement of streets at the expense partially of proprietors, is clear.
Municipality No. 2 v. Guillotte, 297.
7. In the absence of proof of fraud, the acceptance by the corporation of work which it was authorized to contract for, is *prima facie* evidence against the defendant, so far as relates to its completion and the manner in which it was done.
Ibid.
8. The provision in the 16th section of the Act incorporating the Vicksburg, Shreveport and Texas Railroad Company, to the effect "*that no transfer of stock shall exempt the party transferring it from the obligation of paying installments afterwards called for, until fifty per cent. on each share shall have been paid,*" exempts from liability to the company only those who have transferred their share of stock after the payment of fifty per cent. on each share, *before* the installments have matured, and payment has been demanded.
Vicksburg, Shreveport and Texas Railroad Company v. McKeen, 724.
9. Courts of justice cannot regard the the wishes of the majority of the members of a corporation, unless expressed in a valid form, in conformity with the bye-laws and charter.
German Evan. Con. v. Pressler, 799.
10. Where church membership is a necessary qualification of the trustees who are to manage the affairs of the corporation, a trustee who withdraws himself from the church and joins a church of another denomination, which latter church prohibits a connection by its members with the former, such trustee will be considered as having abandoned his office of trustee, and as having no further interest in the property of the church he has left.
Ross v. Crockett, 811.
11. A majority of the Board of Trustees cannot undertake to act in their individual names for the board itself, and no act can be done affecting the ownership of property, except by a resolution of the board when regularly constituted and sitting in consultation.
Ibid.
12. Where the liability of a stockholder in an incorporated company, on a mortgage given to secure his subscription to the capital stock, depends on a future contingency, prescription will not begin to run until the contingency has happened, which was to make the payment of the subscription demandable.
Liquidator of Clinton and Port Hudson R. R. Co. v. Eason, 816.
13. Where property encumbered with a mortgage to secure the subscription of a shareholder to the capital stock of a corporation, is sold with shares of stock, for a certain price, and without guaranty against the mortgage, the purchaser is liable to the original stockholder who, when called on for payment of the subscription, may call in warranty his vendee, although there had never been any transfer of the stock on the books of the company.
Ibid.
14. An obligation signed by the members of a stock company to pay a certain amount proportionate to the stock of each, is not a joint, but a several obligation.
Green v. Relf, 828.

CORPORATIONS (*Continued*).

15. Where a majority of the stockholders have, by the charter, the right to order the winding up and liquidation of the affairs of the company, and a majority of them sign an obligation to pay their proportion of the outstanding debts, they cannot be released from the obligation on the ground that it was not binding upon any of the stockholders until all had signed.

Ibid.

See ESTOPPEL—*Pochell v. Kemper*, 308.

See NEW ORLEANS—*Inhabitants v. New Orleans*, 452.

CORPORATIONS, INSOLVENT.

See SALE, JUDICIAL—*Hyde v. Mississippi Sound Company*, 492.

COSTS.

1. The Act of 1857 having provided that "all the criminal expenses incurred in the different parishes of this State, by arrests, confinement, and prosecution of persons accused of crime, their removal to prison, the pay of witnesses, and all other expenses attending criminal prosecutions, except the pay of jurors, shall be paid by the State, upon the certificate of the Clerk and the presiding Judge of the several courts of this State," the duties of the Auditor relative to accounts for such expenses thus certified, are ministerial and imperative, and he must issue his warrant on the Treasurer therefor. It would be otherwise, if the certificate of the Clerk and Judge should show upon its face that it was not drawn in accordance with the law, as, for instance, if it purported to be for fees in civil suits.

Parker v. Robertson, 249.

2. The 15th section of the Act of 1855, which gives the Sheriffs \$100 per annum for their fees in criminal cases, did not intend this sum as their sole compensation. There are many services rendered by Sheriffs, which are not provided for in the fee bill.

Ibid.

3. The party convicted in a criminal case must be condemned to pay the costs, and after the return of *nulla bona*, or after the Clerk and Judge are satisfied by sufficient evidence that the convict has no property, then the State becomes responsible for the costs.

Ibid.

4. When a survey is ordered, the costs of making it must be taxed with those of the suit, and paid by the party cast in the action.

Williams v. Close, 737.

See BOUNDARY—*Tircuit v. Pelanne*, 215.

See WARRANTY—*Underwood v. Lacapère*, 276.

See ATTORNEY AT LAW—*Bacas v. Klein*, 407.

COURTS.

1. The Judges of the courts in New Orleans are vested with full power to regulate the police of their courts, and to prevent a disturbance of the administration of justice.

New Orleans v. Bell, 214.

2. Where a rule was taken on the opposite party to have the expense of making a "*plan*" taxed as costs, and the defendant did not except to the form of proceeding, but answered to the merits, and testimony was taken without objection, it was the duty of the Judge to decide upon the merits of the controversy; and that which ought to have been pleaded as an exception in the court below cannot be assigned as error on the appeal. Although the amount allowed was a large one, there being no witness who

COURTS (*Continued*).

estimated the value of the work at less than the amount allowed by the Judge, he could not have fixed upon a smaller amount, without acting arbitrarily and disregarding the testimony. *Surgi v. Roselius*, 263.

CRIMINAL LAW.

1. Where in a criminal case the Judge *a quo* refused an application for a new trial, based on the ground of newly discovered testimony and the failure of the Sheriff to summon witnesses, stating that he disbelieved the affidavit of the accused—*Held*: That the refusal to grant a new trial could not on appeal be assigned as error. *State v. Rolland*, 40.
2. An endorsement or memorandum of the Clerk upon the indictment is not properly a part of the record. *Ibid.*
3. The refusal of the Judge of the Criminal Court to grant a continuance on the affidavit of the accused, which the Judge did not believe to be true, cannot be assigned as error of law on appeal. *State v. Lindsey*, 42.
4. After the jury list had been called over in the presence of the accused and his counsel, and five jurors had been sworn, and four peremptory challenges had been made by the prisoner, his counsel moved for a continuance, on the ground that various jurors in the list were not in attendance, nor within the jurisdiction of the court, and were not liable to jury service, and that some of them had been excused previous to the list being served on the prisoner—*Held*: That the accused must be considered as having waived any objection he may have had to the panel, and that it was too late to move for a continuance. *Ibid.*
5. The arrival of a vessel at New Orleans, after refusing to obey the orders to remain in quarantine at the Quarantine Station, in the parish of Plaquemines, is an offence committed in the parish of Orleans, and triable in the First District Court of New Orleans. Session Acts 1855, p. 316, § 6. *State v. Patterson*, 46.
6. The proclamation of the Governor is the only evidence admissible to prove that the port of departure of the vessel was an infected place; but, being matter of evidence, it need not be set forth in the information. *Ibid.*
7. The District Attorney is not bound, under the 15th section of the Act of 1855 "relative to criminal proceedings," to enter a *nolle prosequi* in a case of assault and battery which has been compromised, the section not being imperative, but merely permissive. *State v. Hunter*, 71.
8. Objections to an indictment for formal defects, apparent on the face of it, must be taken by demurrer, or motion to quash the indictment, before the jury are sworn, and cannot be made afterwards. *State v. Boudreaux*, 88.
9. The State has no right of appeal from a judgment sustaining a motion in arrest of judgment in a case where the offence is punishable with fine only. *State v. Rentiford*, 214.
10. Where a gun was taken by the accused in another State, its sale in this State might be proof, not of a larceny here, but that the original taking was felonious. Its sale here would not be in violation of any law of this State; and a party cannot be tried here for a crime committed in another State. *State v. Reonnals*, 278.

CRIMINAL LAW (*Continued*).

11. On an indictment for embezzlement, the jury cannot find the accused guilty of a breach of trust. *Ibid.*
12. Where the jury have written their verdict upon the indictment, but it is recorded differently, the verdict as written by them shows what was their meaning and intention. *Ibid.*
13. Prosecutions must be by indictment or information; and the State has the right to choose either mode, but cannot prosecute by both at the same time. *State v. Ross*, 364.
14. After prosecuting under an indictment which has been ignored, the State is not barred, in new proceedings, from selecting indictment or information, as provided by the Constitution. *Ibid.*
15. Under the 11th section of the Act of 1806, which embraces every species of criminal homicide known at common law, and the subsequent legislation on the subject, a slave may be found guilty of manslaughter. *State v. Jack*, 385.
16. The Act of 1857 notices only the crime of willful murder committed by a slave, but is silent as to any other species of homicide. It cannot, however, be supposed, that it was intended to do away with the prosecution of criminal homicides short of willful murder. *Ibid.*
17. The 35th section of the Act of 1857 provides, "That in all cases where a slave is charged with a crime punishable with death, or imprisonment at hard labor for life, the jury shall have a discretionary power to commute the penalty and inflict a lesser punishment." *Ibid.*
18. Section 29th, Act of 1857, declares that, "Whenever the punishment is left by law to the discretion of the court, it shall in no case extend to the privation of life or limb. *Ibid.*
19. Article 78 of the Constitution of 1852 vests Justices of the Peace "with such criminal jurisdiction as shall be provided by law." *State v. Peter*, 521.
20. According to sections 21, 22, 26, 27 and 28 of the Act of 19th March, 1857, relative to the trial of slaves accused of capital offences, Justices of the Peace act, in the trial of slaves, not only as jurors, but also in an official capacity, and cannot be excluded from the trial of a slave, because they have presided and taken part in a previous trial of the same slave, for the same offence. *Ibid.*
21. Before a confession is allowed to go to the jury, the witness to whom it was made should be interrogated as to whether it was voluntary. *Ibid.*
22. If he testifies that the confession was voluntary, then the counsel for the accused may impeach his testimony by his former statement to the contrary. *Ibid.*
23. Although the laws relative to the organization of the tribunals for the trial of slaves, in the country parishes, do not contemplate that the presiding Justices of the Peace should charge the jury on points of law, yet it would not be illegal if they thought proper so to charge them. *Ibid.*
24. In a case of rape, the evidence of witnesses to prove the details of the complaint made by the prosecutrix against the accused, immediately after the

CRIMINAL LAW (*Continued*).

- commission of the offence, is admissible as part of the transaction, and not as proof of the truth of the statements. *Ibid.*
25. Slaves are prosecuted as persons, and their right to have all the testimony that may establish their innocence, is superior to the principle which would exclude their owners, on the ground of interest, and their testimony ought to be received, subject to the credibility which the jury may attach to it. *Ibid.*
26. The Article of the Constitution which requires prosecutions to be by indictment or information, does not prevent the Legislature from prescribing the forms of such instruments. *State v. Mullen*, 570.
27. The definition of the offence of murder, as known under the common law of England, is the true definition of the crime of willful murder, the punishment of which is provided for by the first section of the Act of the Legislature of 1855, relative to crimes and offences. *Ibid.*
28. If *A* threatens to take the life of *B*, or to do him great bodily harm, and *B*, being informed of the threat, arms himself for the true and sole purpose of self protection, and the parties subsequently meet without design, and *A* draws a deadly weapon and approaches *B* with the apparent intention to assault him with it, and *B* believes that he is in danger of his life or great bodily harm, and has no way of avoiding his adversary, advances upon him and kills him, the killing is justifiable in self defence. *Ibid.*
29. But if *A* threatens *B* with personal violence, and the threat is communicated to *B*, and *B* thereupon arms himself with a deadly weapon, and meeting *A*, kills him, while *A* is not making any hostile demonstration against *B*, the killing is willful, deliberate, malicious, and is murder. *Ibid.*
30. Voluntary drunkenness, when no provocation has been given, furnishes no excuse for the act of killing another. *Ibid.*
31. It is sufficient, in an indictment for an attempt to carry a slave by land out of the State, to describe the slave as being "a negro man, slave for life," and giving the name of his master, when the name of the slave is not known, to the District Attorney or to the Grand Jury. *State v. Adams*, 620.
32. The Act of 1816, making it a crime to carry, or attempt to carry a slave by land out of this State, is not repealed by the general repealing clause of the Act of 1855, relative to crimes and offences, nor by the same clause in the Act of 1857, relative to slaves. *Ibid.*
33. The general repealing clauses of these Acts do not repeal the former statutes denouncing crimes and offences, upon which the Acts are silent. *Ibid.*
34. Where a slave was prosecuted under the Act of 1857, "relative to slaves," for having struck a white man, so as to cause the shedding of blood, and the jury acquitted him of any capital offence, but sentenced him to receive corporal punishment—*Held*: That the accused, in such a case, is not debarred the right of appeal; and that Art. 62 of the Constitution of this State, which grants the right of appeal in all criminal cases, where the offence charged is punishable with death, or imprisonment at hard labor, does not make that right depend upon the nature of the verdict, or the

CRIMINAL LAW (*Continued*).

punishment that may be inflicted by the jury, but upon the nature and punishment of the offence charged, as fixed by law.

State v. Charles, 649.

35. Section 28th of the Act of 1857, relative to slaves, empowers the court to inflict corporal punishment only when the accused has not been *convicted* or *acquitted* of an offence punishable with death, and where a slave has been acquitted by the court of any capital offence, corporal punishment cannot be inflicted on him. *Ibid.*

36. The objection, that the defendant did not have a copy of the venire and indictment served upon him two entire days before his trial, must be urged before going to trial; it can have no effect when the defendant seeks to avail himself of it after the verdict has been rendered.

State v. Fuller, 667.

37. The general repealing clause of the Act of 1855, relative to crimes and offences, does not repeal the former statutes denouncing crimes and offences, upon which the Act is silent. *Ibid.*

38. It is in the discretion of the District Judge to determine whether or not a case should be postponed or continued on account of the ill health of the prisoner. *State v. Ward*, 673.

39. Slaves are regarded in our law, both as property and persons, and the 9th section of the Act of 1855, relative to crimes and offences, which punishes an assault upon a person by "willfully shooting at him," &c., applies to an assault upon a slave, as well as a free person. *State v. Davis*, 678.

40. The Act of 1819, making it a crime to harbor and conceal a runaway slave, is not repealed by the repealing clause of the Act of 1855, relative to crimes and offences. *State v. Fuller*, 720.

41. In a criminal case, it is within the discretion of the District Judge to grant a continuance on the affidavit of the accused, of the absence of a material witness, who is a non-resident and not subject to the process of law, but the appellate court cannot interfere with the exercise of that discretion.

State v. Nicholson, 785.

42. Where the offence charged in the indictment was in the words of the statute, uttering and giving in payment a forged and counterfeit bank note, *knowing the same to be forged and counterfeited*, and in the indictment the words "*knowing the same to be forged and counterfeited*," were omitted—*Held*: That the defect was not remedied by the charge in the indictment, that the counterfeit bill was uttered and given in payment with an "intent to defraud." *Ibid.*

43. The statute of 1855, requiring that *formal objections* to an indictment shall be taken before the jury are sworn, and not afterwards, does not apply to matters of substance essential to the very existence of the offence, and on such objections as formerly, the judgment may be arrested. *Ibid.*

44. By section 6th of the "Act to regulate the mode of procedure in criminal prosecutions," approved March 14th, 1855, the State is only relieved from the necessity of alleging and proving an intent to defraud some particular person, but is still required to allege an offence in other respects, corresponding with the statute which creates it. *Ibid.*

CRIMINAL LAW (*Continued*).

45. When the sentence against the prisoner exceeds the maximum of imprisonment under the statute, the case will be remanded with instructions to the District Judge to pronounce judgment upon the verdict according to law.
Ibid.
46. The mere belief of a person, that an assault is made upon him under circumstances denoting an intention to take his life, or to do him great bodily harm, will not justify taking the life of the person making the assault; there must have been a reasonable ground for such apprehension to render the killing justifiable homicide.
State v. Swift, 827.

See SUPREME COURT—*State v. Haase*, 79.

See APPEAL—*State v. Ross*, 364.

State v. Ward, 673.

See JURY AND JURORS—*State v. Bunker*, 461.

See EVIDENCE—*State v. Maitremme*, 830.

CURATOR.

See PARTITION—*Shaffet v. Jackson*, 154.

See EXECUTORS AND ADMINISTRATORS—*Succession of Rice*, 317.

See SUCCESSIONS—*Surpi v. Calder*, 336.

See ABSENTEE—*Wilson v. Smith*, 368.

DAMAGES.

1. Proof of possession as owner is sufficient to maintain an action of damages for injury done to a slave.
McCutcheon v. Angelo, 34.
2. When a party is sued for damages, resulting from a breach of contract in failing to deliver, as he had contracted to do, a specific number of molasses barrels—*Held*: That the market price of barrels at the time of the breach of the contract, and not exceptional sales, is the proper criterion for the estimation of damages.
Thompson v. Howes, 45.
3. In an action against the city corporation to recover damages for injury done by a mob, when the defence pleaded was a general denial—*Held*: That under the pleadings the city might prove in mitigation of damages that the plaintiffs had exposed their property in the public market, in violation of an ordinance of the city requiring the markets to be closed at the hour when the injury was done, but that such evidence could not be received as a complete bar to the action.
Fortunich v. New Orleans, 115.
4. The violation of a right to the use of property is sufficient to maintain an action without proving damages.
Dudley v. Tilton, 283.
5. In a suit brought against the captain and owners of a steamboat, to recover damages for loss or injury arising from the bursting of the boiler, the Act of Congress approved July 7th, 1838, entitled, "An Act to provide for the better security of the lives of passengers on board of vessels propelled, in whole or in part, by steam," should govern, and not Article 2999 of the Civil Code.
Porée v. Cannon, 501.
6. The 13th section of that Act, in such an action, throws the burden of proof upon the captain and owners of steamboats to show, that the explosion was not the result of negligence on their part, or those employed by them.

Ibid.

DAMAGES, (*Continued*).

7. In an action for damages on account of slanderous words, malice is an essential fact, and should always be proved. *Harry v. Constantin*, 782.
8. The general rule for the measure of damages for the inexecution of a contract, by Article 1928 of the Civil Code, is the loss suffered or the profit of which the obligee has been deprived. *Gauthier v. Green*, 788.
9. To exempt the proprietor and undertaker from the charge of negligence and liability for damages caused by the falling of the wall of a house in course of demolition, the notice of danger required by law to be given in such cases must be of such a character as to put the party injured in fault. *Jackson v. Schmidt*, 806.
10. When it is contended that a *barricade* had been erected, it must be shown that it was an actual obstruction to passage, in order to constitute sufficient notice or warning of the impending danger, and thereby exonerate the proprietor from responsibility in case any one is injured by the falling of the wall, or any part of the materials composing it. *Ibid*.
11. When in such a case the proprietor, through an error of judgment, had not given sufficient notice, vindictive damages should not be allowed. *Ibid*.

See EXECUTION—*Mock v. Kennedy*, 32.

See PRACTICE—*Nicholson v. Desobry*, 81.

See LEVIES AND ROADS—*Inge v. Police Jury*, 117.

See CORPORATIONS—*Bennett v. New Orleans*, 120.

See FERRIES—*Chiapella v. Brown*, 189.

See BILLS AND NOTES—*Kuenzi v. Elvers*, 391.

See INJUNCTION—*Perry v. Kearney*, 400.

Williams v. Close, 737.

Nereu v. Voorhies, 738.

See EVIDENCE—*Rayne v. Taylor*, 406.

See COMMON CARRIER—*Tardos v. Toulon*, 429.

DONATION.

1. The donee is a universal one in the sense of Article 1539 of the Civil Code when the donor has given to him all his property, reserving only enough to himself for subsistence. *Porche v. Moore*, 241.
2. The specification of each particular thing given, in the act of donation, does not change the character of the donation so as to avoid the obligation, on the part of the donee, of paying the debts of the donor. *Ibid*.
3. Where *A*, assuming to be the agent of *B*, buys a tract of land in the name of *B*, for whose benefit he pays the price, thereby intending to make a donation to *B*, he cannot afterwards defeat the title of *B*, by executing an act revoking the donation for want of acceptance of it by *B*. *Giannoni v. Gunny*, 632.
4. An instrument of writing conveying a title to slaves in which the grantor uses the expressions, "*give and bequeath*," when followed by a delivery of the property, will be considered a donation *inter vivos*. *Crawford v. Puckett*, 639.
5. Where a father, in the State of Arkansas, made a donation of slaves to "*the heirs of his son*," the son then living and receiving the property—*Held*: That it was a valid donation to the minor child of the son, then in existence, who, as presumptive heir, received the benefit

DONATION (*Continued*).

of the donation, and that *his* father, acting merely in a fiduciary capacity, could not alienate the property to the prejudice of the rights of his minor child.

Ibid.

6. In a common law State where slaves are personal property, a gift by parol, followed by delivery, confers a valid title.

Ibid.

7. A donation under our laws is not valid, when the usufruct of the property donated is reserved to the donor.

Tillman v. Mosely, 710.

See WILLS—*Barbet v. Roth*, 381.

ELECTIONS.

1. In a suit contesting an election on account of violence used in keeping voters from the polls, it should be alleged that there was a sufficient number prevented from voting to have varied the result; and the absence of such material allegations is fatal to the suit.

State v. Mason, 505.

EMANCIPATION.

See SLAVES—*Jamison v. Bridge*, 31.

Brown v. Raby, 41.

Pauline v. Hubert, 161.

Deshotels v. Soileau, 745.

See SUCCESSIONS—*Lewis v. Williams*, 625.

See MINORS—*Boyd v. Frantom*, 691.

See SLAVES and WILLS—*Price v. Ray*, 697.

ESTOPPEL.

1. A party who being himself the owner of property, points it out to be seized in execution for the debt of another, will be estopped from denying the title of the defendant in execution.
2. A party who bids for land at a public land sale, is estopped from denying the validity of the sale on the ground that it was land liable to private entry, which he had unsuccessfully applied to the Register and Receiver of the Land Office to enter.
3. Where a party has sued and obtained judgment against a company, as a corporation, he is estopped from afterwards denying its corporate capacity.
4. A party who permits property in his possession to be seized under execution and sold as the property of another, without objection on his part, and at the sale purchases the property, does acts inconsistent with the idea of ownership on his part, and which generally have the force and effect of an estoppel.

Amonett v. Young, 175.

Hulse v. Dorsey, 302.

Pochetu v. Kemper, 308.

Smith v. Taylor, 663.

See BILLS AND NOTES—*McKleroy v. Bank of Kentucky*, 458.

See BONDS—*Taliaferro v. Steele*, 656.

See HUSBAND AND WIFE—*Bisland v. Provosty*, 169.

See FERRIES—*Chiapella v. Brown*, 189.

See ATTACHMENT—*Frost v. White*, 140.

EVICTION.

1. The party evicted from real estate, cannot recover the difference between the costs of the improvements made by him, and the enhanced value of the soil.

Sarpy v. New Orleans, 311.

EVICTIO (*Continued*).

2. To maintain an action for the rescission of a sale of property of which the vendee is in possession, it is necessary there should have been an offer to return the property, made previous to the institution of the suit.

Matta v. Henderson, 473.

3. There must be an express allegation that the vendor has been disquieted in his possession, or has just reason to fear that he will be disquieted, to entitle the vendee to demand that security be given by the vendor against eviction.

Ibid.

See ATTORNEY AT LAW—*Sarpy v. New Orleans*, 311.

See WARRANTY—*Vienne v. Harris*, 382.

See SALE—*Dyson v. Phelps*, 722.

EVIDENCE.

1. The private memoranda or projets of an agreement, unsigned and retained by the writer of them are not evidence of a contract obligatory upon him or his representatives, unless corroborated by other testimony.

Price v. Mathews, 11.

2. Parol evidence is inadmissible to show that a slave was received by the husband, in lieu of money due his wife from her father's estate.

Wood v. Harrel, 61.

3. The American State papers published by order of Congress are admissible as evidence. The copies which they contain of legislative and executive documents, are as good evidence as the originals are from which they are copied.

Dutillet v. Blanchard, 97.

4. A party claiming title to a promissory note under an order and sale made in the proceedings in bankruptcy, is not bound to produce in evidence a transcript of all the proceedings.

Price v. Emerson, 141.

5. It must now be considered settled, that effect will be given to parol proof of the sale of real estate, if it is received without objection.

Pauline v. Hubert, 161.

6. The title to slaves may be proved by parol when it is shown that, by the laws of the State where the facts testified to took place, and where the slaves then were, they could be transferred by verbal sale and delivery.

King v. Neely, 165.

7. Duly authenticated copies of documents from the State Land Office are admissible as evidence.

Franklin v. Woodland, 188.

8. In matters of conflicting settlements upon public lands, the acts and conversations of parties are admissible in evidence, the objection going to their effect.

Ibid.

9. The name of the vendee in the body of the act of sale was omitted, the notary and one of the witnesses to the act were offered to prove that *H. T. W.*, whose name was subscribed together with that of the vendor to the act, was the purchaser—*Held*: That the omission could be supplied by such parol evidence.

Beauvais v. Wall, 199.

10. Where it was proved that the original of an act of transfer and assignment had been deposited in the General Land Office—*Held*: That the registry of it in a book in the Recorder's office, with the certificate of the Parish

EVIDENCE (*Continued*).

Judge appended, was competent evidence of the transfer and of its registry. *Ibid.*

11. Where it is impossible for a party to produce an original, which is on file in the Land Office as a part of the archives of the Government, a copy is admissible in evidence. *Ibid.*
12. The evidence of a single witness to establish acknowledgements of indebtedness on the part of a deceased person, is held to be the weakest species of evidence known to the law, and will be received with disfavor. Such evidence held in this case to be insufficient to defeat the plea of prescription. *Bringier v. Gordon*, 274.
13. The enrollment of a steamboat is a record, of which the collector of customs is the custodian, under the Acts of Congress, and a copy thereof, duly certified by the collector, is competent evidence; so is such a copy of the act of sale recorded under the Act of Congress of 1850. *Sampson v. Noble*, 347.
14. A lease made by a third party and defendant, is properly rejected when offered in evidence in a suit, as between a plaintiff not a party to the lease and defendant. And so is testimony tending to prove facts not alleged. *Cohn v. Levy*, 355.
15. On an allegation of a written lease, no evidence can be offered to prove one by parol. *Ibid.*
16. In a question of location, the only authorized evidence is a survey made by proper authority. *Edwards v. Ballard*, 362.
17. The decision in the case of *Gray v. Trafton*, 12 M. 702, reaffirmed—to the effect that an order given on an attorney at law for the amount of a claim placed in his hands for collection, is sufficient evidence of a transfer. *Edwards v. Daley*, 384.
18. Where an administrator contests the consideration of such an order, the burden of proof is certainly upon him to establish want of consideration. *Ibid.*
19. Alterations in a warehouse receipt after its delivery, are presumptive evidence of fraud; and the authenticity and importance usually attached by the law to those instruments made in good faith, do not attach to such an instrument. *Martin v. His Creditors*, 393.
20. The *bona fide* possession of a warehouse receipt is legal evidence of possession and where different parties are in possession of such receipts, the earliest must prevail. *Ibid.*
21. Where a pass-book has been kept by a party with a merchant, although every entry of items bought has been made by the merchant or his Clerk, yet the book is the property of such party, who is presumed to have examined it, and if he has made no objection to its contents, may be compelled to produce the same, and it may be offered in evidence against him. *Succession of McLaughlin*, 398.
22. The record of a suit brought by attachment against a supposed owner, in which the thing seized was released upon bond by such supposed owner, is not admissible as evidence of real ownership in an action between other

EVIDENCE (Continued).

- parties, where the question relates to title—but a judgment changing the ownership of the property would be admissible, in the same manner as a private writing, although the plaintiff in the suit pending had no connection with the former action. *Snapp v. Porterfield*, 405.
23. In an action of damages for libel and slander, the truth of the words written or spoken, may be given in evidence as a defence to the action under such a plea. *Rayne v. Taylor*, 406.
24. Where a slave is sold with full guaranty, evidence is inadmissible which would contradict the written act of sale by showing that the slave was not warranted against a particular vice. *Jackson v. Hays*, 577.
25. But to rebut the allegation of fraud and concealment, parol evidence may be received to show that at the time the sale was about to be passed the vendor had stated to the vendee that the slave had once run away from him. *Ibid.*
26. The copy of an act under private signature does not prove the genuineness of the original, although admitted to record on the affidavit of a subscribing witness. *Reynolds v. Stille*, 599.
27. Where a commission to take testimony is specially directed by name to a person in another parish, his authority to administer oaths will be presumed. *Rembert v. Whitworth*, 608.
28. In a suit by the administrator of an estate to recover property sold by the intestate, parol proof is inadmissible to show that the sale by authentic act was simulated, unless the sale is alleged to have been made in fraud of creditors. *West v. Hickman*, 610.
29. When it is apparent that a party intended to offer in evidence a paper, or document, but failed to do so through inadvertence, or mistake, and the document is copied in the transcript of the record, the Supreme Court will consider and give effect to the evidence, as if it had been formerly introduced, if it is admissible. *Powell v. Hopson*, 666.
30. In a suit on an account, a special denial by defendant of the correctness of the charges for interest, discount and commissions, is restrictive of the general denial, and proof that no other objection was made to the account when presented, when thus corroborated, will suffice. *White v. Jones*, 681.
31. When the defendant offers in evidence the credit side of an account copied from the merchant's books, the whole account must be taken together, but the defendant is not excluded from showing the incorrectness of particular items of debit. *Ibid.*
32. The evidence of one witness, without corroborating circumstances, is not sufficient to establish an item in account of over \$500, for amount of a draft paid by the merchant, which is alleged to be lost or mislaid. *Andrew v. Keenan*, 705.
33. Articles 2258 and 2259 C. C., in regard to lost instruments, do not apply to an action for reimbursement of money paid by a merchant upon an accommodation acceptance, when the draft is lost or mislaid. *Ibid.*

EVIDENCE (*Continued*).

34. A party is not concluded by his declaration of residence in an act of conveyance, and evidence is admissible to contradict the recital, when the domicile is not one of the causes of the contract.
Tillman v. Mosely, 710.
35. A party may give in evidence the answers of his adversary to interrogatories on facts and articles, although such answers were made in a different suit between them from the one on trial. *Alford v. Hughes*, 727.
36. The failure of the Clerk to endorse a document as filed, which was offered in evidence, is of no consequence when the document is actually filed in the records, and is contained in the statement of facts.
State v. Badon, 783.
37. An attorney at law is a competent witness in a case in which he is employed, and his testimony can only be excluded on legal grounds; the relations which exists between him and his client go to the effect and not to the admissibility of his testimony. *Succession of Grant*, 795.
38. A copy of several consecutive sections of an Act of another State, taken from a digest of general statutes, and certified to be a true copy by the Secretary of State, should be received as *prima facie* evidence of the whole law of the State upon the subject treated of in the sections.
Ibid.
39. The capacity and signature of a Justice of the Peace who has taken a deposition under commission in another State, must be established by the certificate of the Governor under the great seal of the State. *Ibid.*
40. The registry of an act under private signature, does not make proof of its execution by the parties to it. *Ibid.*
41. The written or verbal statements of a prosecutor, are considered as merely hearsay evidence, and not admissible, except to rebut his declarations on the witness stand, or when received after his death in a case of homicide, as dying declarations. *State v. Maitremme*, 830.

See PRESCRIPTION—*Saunders v. Carroll*, 27.

Union Bank v. Bradford, 159.

See CRIMINAL LAW—*State v. Patterson*, 46.

State v. Peter, 521.

See BILLS AND NOTES—*Bank of Louisiana v. Satterfield*, 80.

Grieff v. McDaniel, 160.

Rice v. Davis, 435.

Succession of Penny, 194.

See DAMAGES—*Fortunich v. New Orleans*, 115.

See CORPORATIONS—*Municipality No. 2 v. Guillotte*, 207.

See INN-KEEPERS—*Pope v. Hall*, 324.

See SUCCESSIONS—*Wilson v. Smith*, 368.

See ACTION—*Delespare v. Warner*, 413.

See REDHIBITION—*Gaiennie v. Freret*, 488.

See BOUNDARY—*Lebeau v. Bergeron*, 489.

See SUPREME COURT—*State v. Bennett*, 651.

See PUBLIC LANDS—*Leblanc v. Ludrique*, 772.

See WARRANTY—*Lale v. Armorer*, 826.

See PRACTICE—*Arrowsmith v. Durell*, 849.

EXECUTION.

1. Where an officer in executing a writ of *fiery facias* against the husband seizes property which he has *good reasons to know* is the separate property of the wife, he is responsible to her in damages for such illegal seizure.
Mock v. Kennedy, 32.
2. Where the plaintiff has recovered a judgment, the proceeding to render his property liable in execution for costs, is statutory, and the forms of the statute must be strictly pursued, under pain of nullity.
Bantz v. Price, 191.
3. The Art. C. P. (as amended) which requires a delay of ten days before an execution shall issue, in the first district, is in the interest of the defendant and for the purpose of protecting his right to a suspensive appeal. C. P. 624; Acts 1853, p. 40. This right he may at any time waive, and a valid execution may issue immediately. C. P. 567. If he suffers the delay for a suspensive appeal to expire, the premature issuance of an execution does not even give him the right to enjoin.
Sowle v. Pollard, 287.
4. The appellees allowed interest in this case during the delay occasioned by the appeal.
Ibid.
5. When the principal, interest and costs of a judgment do not amount to fifty dollars, the Sheriff has no right to sell immovable property to satisfy it.
Zimmerman v. Bartchy, 520.

See INJUNCTION—*Todd v. Fisk*, 13.

Wallis v. Boury, 104.

See ATTACHMENT—*Emanuel v. Mann*, 53.

See GARNISHMENT—*Frellsen v. Anderson*, 65.

See PARTNERSHIP—*Pittman v. Robicheau*, 108.

See SALE—*Scully v. Kearns*, 438.

Gleisses v. McHatton, 500.

Dylke v. Dyer, 701.

See INSOLVENCY, &c.—*Lyons v. McRae*, 438.

See SEQUESTRATION—*Twitty v. Clark*, 503.

EXECUTORS AND ADMINISTRATORS.

1. The functions of an executor are not limited to the execution of the legacies contained in the will, but extend also to the payment of the debts of the deceased.
Meissonier v. Laurent, 14.
2. Where the capacity of a testamentary executor has been recognized, and he has been authorized to act as such by the judgment of a competent tribunal, an objection cannot be entertained collaterally, that he is a foreign executor and has not given the security required by the Act of the Legislature of 1842.
Van Wick v. Rist, 56.
3. The appointment of a dative testamentary executor should not be made when there are no debts of the estate to be paid, nor legacies to be discharged.
Succession of Crocker, 94.
4. The surety on the administrator's bond will be held liable for money set down on the inventory as part of the estate, although it is shown that the administrator received it in a fiduciary capacity before his appointment.
Goode v. Buford, 102.

EXECUTORS AND ADMINISTRATORS (*Continued*).

5. An administrator has the capacity to stand in judgment in a suit by a slave, inventoried as part of the succession, to have her freedom established.
Pauline v Hubert, 161.
6. The heirs and creditors of the estate will be bound by the acts of the administrator, as to the mode of proceeding in the defence of a suit and the reception and rejection of evidence.
Ibid.
7. There is no law which renders an administrator personally liable for a debt of his intestate, on his mere neglect to comply with an *ex parte* order of the Clerk to file his account.
Lockhart v. Wall, 273.
8. The dismissal from office of a curator does not involve the forfeiture of his commissions.
Succession of Rice, 317.
9. An executor is authorized to collect claims until the estate is closed, or he is discharged.
Keane v. Goldsmith, 349.
10. The administrator is entitled to commissions only on the amount which comes into his hands, and for which he is responsible.
Succession of Powell, 425.
11. The Act of 1855, regulating the duties and powers of administrators, being highly penal, should be strictly construed.
Succession of Toy, 536.
12. An executor or administrator, if he has funds to distribute before the expiration of a year from his appointment, may be called upon to distribute them after the time of delay provided by law has expired; but if he fails to obey the order of court, he cannot be subjected to the penalties of the Act of 1855, as he does not, under the Act, so far as relates to filing an account, become liable to its penalties until the expiration of twelve months.
Ibid.
13. The Articles 985 and 986 of the Code of Practice prescribe the form in which a debt due by a succession must be acknowledged by an administrator—*Quere*: Whether such acknowledgment can be made in any other form, to interrupt prescription.
Succession of McAlpin, 617.
14. The incapacity of an administrator to purchase property on behalf of a succession, is not so absolute as to make his purchases utterly void.
Hicks v Weems, 629.
15. Where an administrator, in seeking to collect a debt due to the succession, which had its origin in the price of real estate which belonged previously to the succession, and which was subject to the vendor's privilege in favor of the succession, has the property sold, and buys it in for the estate for a small part of the debt, leaving a large balance of the debt to be ranked among the active means of the estate—*Held*: That although such proceedings may have been irregular, they were not absolutely void, and when ratified by the heirs, their title to the property cannot be questioned by any one.
Ibid.
16. Where an administrator persists in refusing to file his account, after the expiration of the time fixed by law, and fails to tender a good reason for the delay, the Judge shall order him to be arrested and imprisoned until he renders the account. C. P. 1011.
Lobit v. Castille, 779.

EXECUTORS AND ADMINISTRATORS (*Continued*).

17. The subsequent Article enables interested parties to compel him to render an account, by imprisonment, or distraining his property and income.
Ibid.
18. Upon the neglect of the administrator to pay the amount for which judgment has been rendered, and his failure to prove that he has no funds in his hands belonging to the succession, the creditor may take out an execution against such administrator's individual property; but to do so, it is necessary that the judgment should be notified to him, and a rule taken on him in his official capacity.
Ibid.
19. Where the remedy is resorted to, of having the administrator dismissed from office, and sentenced to pay interest and damages, he settles with his successor in office, and not with the creditor who has provoked the dismissal.
Ibid.
20. The regular mode by which an ordinary creditor is to obtain payment of his judgment against an estate, is concurrently with the other creditors. C. P. 987, 1054; C. C. 1168. This implies that an account and tableau of distribution should be filed, wherein each creditor may be classed, in order that he may receive his portion of the funds in the hands of the administrator.
Ibid.
21. Where a creditor declines to pursue the ordinary remedy, and pursues the administrator personally, by a resort to the penal provisions of the law, he must bring himself within them before he can demand the penalty.
Ibid.
22. "The classification and order of payments" referred to in C. P. 993, is that mentioned in a preceding Article (988), and the case is contemplated, where the administrator has funds, and is ordered to pay the same to the creditors, according to their rights, and not a case where funds are not in the hands of the administrator at the time of such classification. *Ibid.*

See SALE, JUDICIAL—*McCulloch v. Weaver*, 33.
Succession of Gurney, 622.

See SUCCESSION—*Waterhouse v. Bourke*, 358.
Saloy v. Cheznaidre, 567.
State v. Leckie, 641.
Succession of Pool, 677.
Sturges v. Sheriff, 231.

See EVIDENCE—*Elwards v. Daley*, 384.
See WILLS—*Atkinson v. Rogers*, 633.
See PRACTICE—*Succession of Hughes*, 863.

FACTOR.

1. Where a draft is drawn by a planter on his factor, for the benefit of the latter, the former is entitled to commissions at two and a half per cent. for the risk incurred as drawer of the draft, according to the mercantile usage established in such cases.
White v. Jones, 681.

FERRIES.

1. The Act of Congress declaring the Mississippi River to be a common highway, free to all citizens of the United States, was not intended to interfere with the right of the State to create and regulate ferries.
Chiapella v. Brown, 189.

FERRIES (*Continued*).

2. A party who was present at the public sale of a ferry and bid against the purchaser, is estopped from asserting that he had an unexpired lease to the same ferry, and that it had not been properly advertised. *Ibid.*
3. Damages may be recovered for an injury to a right of keeping a ferry, committed by one who crosses passengers gratuitously, but receives compensation in whole or in part by keeping the horses of those crossing. *Ibid.*

GARNISHMENT.

1. When new proceedings of garnishment are commenced, the original proceedings are presumed to be abandoned. *Frellsen v. Anderson*, 65.
2. A seizure made on an execution which has expired, is illegal and void. *Ibid.*
3. The Act of 1855, which authorizes a Sheriff, in cases of garnishment, to retain a copy of the writ and proceed on that in the same manner as though the original was in his hands, does not empower the Sheriff to effect more with the copy than he could with the original execution. He could not, with the copy, make new seizures on expired writs. *Ibid.*
4. The answers of garnishees, when categorical, are conclusive, unless disproved. *Helme v. Pollard*, 306.
5. The record not disclosing any interest in the garnishee, in the result of the suit between plaintiffs and defendants, he is considered a mere stakeholder, and not entitled to demand service of the interrogatories taken out by plaintiffs. *Low v. Proctor*, 373.
6. In an attachment suit, the garnishee has the right, even after the interrogatories have been taken *pro confesso*, to ask of the court, at any time before judgment, that the order taking the interrogatories for confessed may be set aside, and that he may be allowed to answer. And it is within the sound discretion of the court, and also its duty, to grant the request, if the ends of justice would be thereby attained. *Rose v. Whaley*, 374.
7. Where the garnishees answer that they have no property, the court is without jurisdiction. *Ibid.*
8. The answers of a garnishee, when categorical, make full proof of the facts stated against the seizing creditor, until contradicted by other evidence. *Barnes v. Wayland*, 791.
9. The credibility of a garnishee cannot be impeached, by showing him to be unworthy of belief; to contradict his answers, the facts stated in them must be disproved. *Ibid.*

See ATTACHMENT—*Ealer v. McAllister*, 821.

HEIRSHIP.

1. By the laws of Mississippi, among collaterals, the kindred of the whole blood are preferred to the kindred of the half blood in the same degree; and by effect of representation, nephews and nieces of the whole blood will exclude a sister of the half blood. *King v. Neely*, 165.

HUSBAND AND WIFE.

1. The wife has no privilege on the movables of the husband's estate for the restitution of her paraphernal funds. *Succession of Richardson*, 1.
2. Where the husband applied for and obtained insurance on his life, accompanying the application with a transfer of the policy, when issued, to his wife, to whom he was indebted for her paraphernal funds received by him—*Held*: That the wife was entitled to the amount of the policy on the death of her husband. *Ibid*.
3. The acknowledgement by a married woman, in an act of mortgage, of her indebtedness, does not estop her from denying that the debt which her mortgage was given to secure had enured to her separate benefit. *Moussier v. Zunts*, 15.
4. The creditor is bound to show affirmatively that mortgage notes signed by a married woman were given for a debt which had enured to her benefit, in order to render her liable. *Ibid*.
5. The burden of proof in such case rests on the creditor, although the wife is separated in property from her husband. *Ibid*.
6. A married woman, when properly authorized, may become security for any other person than her husband. *Ibid*.
7. One who was not a creditor of the husband at the time of the wife's obtaining a judgment against him, of separation of property, cannot successfully attack such judgment, without proof of fraud on the part of the wife. *Noland v. Bemiss*, 49.
8. Property bought by the husband in his own name, and paid for with the separate funds of his wife, is not the property of his wife; but the fact of his having paid for it out of the separate funds of his wife gives to her a mortgage for the amount thus used, which in a proper form of action, may be enforced on any property of the husband. *Wood v. Harrell*, 61.
9. Where, during the marriage, an undivided interest in a plantation fell to the wife, as paraphernal property, the husband never taking possession, but of which the management and administration was given by the wife and her coproprietor to an agent of their own selection—*Held*: That of this part of his wife's paraphernal estate the husband never had the possession and enjoyment, neither was it administered by him and her indiscriminately. *Dodd v. Orillion*, 68.
10. The fact that the husband was consulted by the wife's constituted agent as to the crops, settlement of accounts, &c., subject always to the ratification of the wife, did not change the character of the administration. *Ibid*.
11. Property was purchased at a Sheriff's sale, under execution against the husband, by *M*; *M* transferred it to *H*, who sold it to the plaintiff, the consideration stipulated being the transfer to her vendor of her rights in the succession of her deceased father. The husband always remained in possession of the property. *Held*: That the property so purchased by the wife became her paraphernal property, and that the character of her title was not affected by the fact that her vendor, subsequently to the sale, made a relinquishment of the consideration stipulated in the act of sale. *Ruys v. Babin*, 95.

HUSBAND AND WIFE (*Continued*).

12. Where a suit is brought on a promissory note, the property of the wife, in her name conjointly with that of her husband, the husband must be viewed as appearing therein only to assist and authorize his wife, and the judgment rendered in such suit is the property of the wife.
Raiford v. Wood, 116.
13. The prohibition in Article 2412 of the Code, against the wife's binding herself for her husband, or conjointly with him, for debts contracted by him before or during the marriage, is, to a certain extent, one affecting the public order.
Bisland v. Provosty, 169.
14. Neither the acknowledgement of the wife that the debt was contracted for the benefit of her separate estate, nor the fact that the money was actually paid into her hands, will estop her from afterwards denying her indebtedness, and the creditor is then put upon proof that the debt enured to the benefit of the wife's separate estate.
Ibid.
15. The doctrine of estoppels has no application to the contracts of married women, when they or their property are sought to be held liable for the debts of their husbands.
Ibid.
16. An exception to the rule in regard to the wife's incapacity to bind herself for a debt which does not enure to her separate benefit, may exist when she has actually committed a fraud, but not when it has been impliedly or constructively committed.
Ibid.
17. The wife is liable for all debts incurred for the improvement of her separate estate, advances made for the payment of debts and supplies of necessities for a plantation, which is her paraphernal property, whether she has retained the administration of her paraphernal property or entrusted it to her husband.
Succession of Penny, 194.
18. Art. 2377 of the Code has reference only to the settlement of the accounts between husband and wife, and does not control the action of creditors.
Ibid.
19. There is no question of the right of a married woman, above the age of majority, to renounce her mortgage upon the property of her husband, in favor of a third person.
Ibid.
20. Where the wife, as heir of the husband, applied for a patent which was issued to her as his assignee, a title in her, independent of her husband, cannot be inferred, and the patent must enure to the benefit of the husband's vendee.
Beauvais v. Wall, 199.
21. There may be cases in which the husband ought not to be allowed interest on debts of the wife paid by him, as where the payment has been fraudulently deferred by him for the purpose of injuring her; but where the debt has been paid in good faith, the interest, as an incident of the debt, is chargeable to the person who owes the same. *Davis v. Robertson*, 281.
22. By giving the husband the administration of her paraphernal property, the wife relieves herself of her portion of the marriage charges.
Ibid.
23. In the absence of proof of the wife's separate administration of her paraphernal estate, it will be presumed to have been under the management of the husband.
Ibid.

HUSBAND AND WIFE (*Continued*).

24. It is impossible to give a defamatory intention and effect to epithets applied by a husband to his wife, when no one was present but the spouses themselves, although such epithets would have had much gravity had they been uttered in the presence of any third person.
Bienvenu v. Her Husband, 386.
25. Facts which might have given ground for a separation from bed and board, are extinguished by a reconciliation. C. C. Art. 149. *Ibid.*
26. It is only where a subsequent cause is proved to have arisen, sufficient for the basis of the action of separation, that Art. 150 C. C. will entitle the plaintiff to urge a cause precedent to the reconciliation. *Ibid.*
27. A reconventional demand on the part of defendant, for a separation on the ground of abandonment, is not admissible. A particular form of procedure is required by the Code for obtaining a decree of separation on this ground, and to that form the defendant must have recourse for relief. *Ibid.*
28. Art. 2409 C. C. declares that "the wife who has obtained a separation of property must contribute in proportion to her fortune and that of her husband, both to the household expenses, and to those of the education of their children. *She is bound* to support those expenses alone if there remains nothing to her husband." Art. 2412 C. C. means that the married woman shall not bind herself above and beyond the obligations imposed upon her by Art. 2409. *Bowers v. Hale*, 419.
29. The husband is prohibited by law from purchasing the property of his wife in a direct sale, and he therefore cannot be permitted to acquire a title to her property indirectly for a price fixed beforehand by the machinery of legal proceedings against the wife, resulting in the sale of her property.
Parnell v. Petrovic, 601.
30. The relationship of the husband to the wife forbids an arrangement by the husband with the creditors of the wife, under which the title of the wife is to be divested by judicial proceedings against her, and the property transferred to the agents of the husband. *Ibid.*
31. The purchaser of the property of the wife, under an agreement between the husband and the purchaser, that when the debts of the wife assumed by the purchaser should be paid off from the revenues of the property, the property should be conveyed to the husband or his heirs, will not divest the wife of her title, or enable the husband or his heirs to hold the property adversely to the wife and her heirs. *Ibid.*
32. The voluntary separation of husband and wife does not prevent their acquisitions during the period of the separation from falling into the community under Art. 2371 of the Civil Code. *Joffrion v. Bordelon*, 618.
33. When the property of the wife described in the marriage contract is not declared to be given in dower, it remains paraphernal. *Ibid.*
34. Where property purchased during the marriage is paid for out of the separate funds of the husband, a charge exists in favor of the separate estate of the husband against the community for the amount of such purchase.
Ibid.
35. A married woman may sign a note or draft in payment of a debt created for the benefit of her individual estate, without the authorization of her husband.
Brooks v. Wigginton, 676.

HUSBAND AND WIFE (*Continued*).

36. A draft given for such a debt by a married woman is an act of administration, and in giving it, she may be considered as having resumed, as she may do at will, the administration of her paraphernal property.
Ibid.
37. A deed of trust is the common law form of securing property to the wife.
Eager v. Brown, 684.
38. Under the common law, a married woman cannot possess personal property independently of her husband, except when a trust is created for her sole benefit.
Ibid.
39. A deed of trust creates for the wife a separate estate, and her husband, as trustee, cannot reduce the property into his possession, so as to make it his own; if he sells it while trustee, he holds the proceeds in trust, and not as owner.
Ibid.
40. A deed of trust executed in Alabama, vesting title in the wife to property is valid after the removal of the parties to this State, and if the husband's affairs become embarrassed, the wife may claim a separation of property and the administration of her separate estate.
Ibid.
41. When property of the wife is sold in a foreign State, and the proceeds thereof are received by the husband in that State, the wife has no privilege upon the property of her husband for the same in this State. *Ibid.*
42. If he receives the proceeds of the sale, while trustee of his wife, he is personally liable for the amount so received by him; but in a contest for the amount received by him, between the wife and his creditors, his personal liability to the wife must yield to the rights of the creditors. *Ibid.*
43. The wife, although separated in property from her husband, cannot be made liable on a note signed by her with her husband, which did not enure to her separate benefit.
Lee v. Cameron, 700.
44. When it is shown that the wife has disposed of property belonging to the community, for the purpose of procuring the necessities of life for herself and children, which her husband failed to furnish them with, his authorization to her to sell will be presumed, under the provisions of Art. 1779 of the Civil Code.
Johnston v. Pike, 731.
45. The right of the wife in this respect is extremely limited, since the husband's authorization is only implied in contracts entered into by her to procure the necessities of life, and only when his neglect to supply them gives rise to that emergency. *Ibid.*
46. The object of the law requiring the authorization of the husband, before the wife can be sued, is fully accomplished when the husband joins the wife in an answer to the suit, even when they have not been designated as husband and wife in the petition.
Favaron v. Rideau, 805.
47. When a married woman who had been authorized to defend a suit by her first husband, marries a second time, while the suit is pending, it is not necessary that the authorization of her second husband should be obtained.
Ibid.

HUSBAND AND WIFE (*Continued*).

48. The matters treated of in the law 29 of title 11 of the 4th Partida concern the *forum*, and have no application in the courts of Louisiana.

Morales v. Marigny, 855.

49. Although the parties to a marriage contract have submitted themselves to the laws of a foreign country, as to the interpretation of the contract, the jurisdiction of the tribunals of this State, where they actually reside, must be exercised in accordance with our own rules of law. *Ibid*.

50. The community of acquets and gains between husband and wife did not exist as a part of the general law of Spain; it prevailed in certain provinces of the kingdom, and not in others. *Ibid*.

51. Although by the laws of Spain the ownership of the effects acquired during marriage is governed by the law of the province where the marriage was contracted, and not by that to which the spouses remove, yet this is only to be understood of such effects as are acquired in the former country, and not of such as are acquired in the latter. *Ibid*.

52. The wife, under the laws of Spain, as well as under our laws, is entitled at any time to resume the administration of her paraphernal estate. *Ibid*.

See EXECUTION—*Mock v. Kennedy*, 32.

See EVIDENCE—*Wood v. Harrell*, 61.

See PRESCRIPTION—*VanWickle v. Garret*, 106.

See MORTGAGE—*Hawkins v. McVea*, 339.

Bowers v. Hale, 419.

See PRACTICE—*Robson v. Shelton*, 712.

See COMMUNITY—*Coons v. Stringer*, 726.

INJUNCTION.

1. An injunction cannot issue to stay an execution on grounds which might have been pleaded in defence before judgment. *Todd v. Fisk*, 13.

2. The existence of a privilege or mortgage upon property seized under a *fi. fa.*, will not authorize an injunction to arrest the sale; the remedy is by third opposition. *Wallis v. Bourg*, 104.

3. An injunction will only be perpetuated as issued for some legal cause stated in the petition. *Pittman v. Robicheau*, 108.

4. Where the judgment enjoined bears the highest conventional interest, the court on dissolving the injunction cannot add anything to that interest, but in a proper case will inflict the full penalty of twenty per cent. damages. *Raiford v. Wood*, 116.

5. When there has been an error committed in issuing a writ of *fi. facias* for more than the plaintiff is entitled to under the judgment, the right to enjoin is limited to the amount for which it has erroneously issued. *Barrow v. Robichaux*, 207.

6. Where the execution of a judgment has been enjoined, and defendant admits, upon being interrogated, a partial payment of such judgment, the injunction should be perpetuated for the amount admitted to have been paid, and dissolved for the remainder still due. *Perry v. Kearney*, 400.

7. The plaintiff and his surety on the injunction bond are bound *in solido* to defendant for damages only on the amount for which the injunction is dissolved. *Ibid*.

INJUNCTION (*Continued*).

8. The plaintiff in an injunction suit cannot claim from the defendant the amount of fees paid his counsel. *Dyke v. Dyer*, 701.
9. On the dissolution of an injunction, the Judge may allow damages to the amount of twenty per cent. on the judgment enjoined, without proof. *Williams v. Cloze*, 737.
10. But when counsel fees are proven and allowed, exceeding twenty per cent., the Judge cannot, in addition to such allowance, award twenty per cent. as damages. *Ibid.*
11. Counsel fees will not be allowed as special damages where an injunction is maintained against a seizure of property, and the case is not a proper one for the allowance of vindictive damages. *Neveu v. Voorhies*, 738.
12. An appeal will lie from an *ex parte* order setting aside an injunction, upon giving bond, under Article 307 C. P. *Knabe v. Fernot*, 847.
13. Where the dissolution of an injunction is calculated to work an irreparable injury, by depriving members of a corporation of privileges, the value of which cannot be estimated in dollars and cents, the injunction cannot be set aside upon giving bond. *Ibid.*
14. Where executory proceedings are enjoined on the allegations of fraud, and payment supported by affidavit, an injunction bond is not required to be given. *Corner v. Zuntz*, 861.

See APPEAL—*White v. Casenave*, 57,

See CORPORATIONS—*New Orleans v. Lambert*, 247.

See SALE—*Weems v. Ventress*, 267.

Gleisses v. McHaddon, 560.

Davis v. Millaudon, 868.

See JUDGMENT—*Herford v. Babin*, 333.

See SEQUESTRATION—*Twitty v. Clark*, 503.

See WARRANTY—*Kelly v. Wiseman*, 661.

INN-KEEPERS.

1. The oath of a party cannot be received to prove the deposit of his baggage or other articles of value at an inn. *Pope v. Hall*, 324.
2. When proof *aliunde*, establishes the fact of the possession by the party of the articles alleged to have been stolen, and their deposit in the inn, and that the room had been entered by thieves, the declaration of such party at the instant of discovering the theft may be given in evidence as part of the *res gesta*—not as proof of a deposit, but as a fact to be connected with other facts tending to prove the loss. *Ibid.*
3. The inn-keeper will be liable for the necessary baggage of the traveler, his watch and personal apparel, and for money which he has about him for his personal use when stolen, notwithstanding a regulation of the inn requiring travelers to deposit certain articles of value in the safe at the office. *Ibid.*
4. There is a distinction to be observed between those effects of a traveler, which are not immediately requisite to his comfort, and which the law requires him to deposit with the inn-keeper or his servant, in order to hold such inn-keeper responsible for their loss, and those which are essential to his personal convenience and which it is necessary to have constantly

INN-KEEPERS (*Continued*).

about him. So that if a guest had been personally notified to deposit at the office of the hotel or inn, his watch and other personal effects necessary to his comfort, this would not liberate the inn-keeper from responsibility, if they were not so deposited. *Profillet v. Hall*, 524.

5. But where the traveler contributes by his own act or negligence to the loss of such things, the inn-keeper is released from liability. *Ibid.*

INSOLVENCY AND INSOLVENT PROCEEDINGS.

1. Since the statute of 1843, a bare majority of the creditors of an insolvent have the power to grant a respite and thus postpone the payment of the debts of the minority. *Morgan v. Nye*, 30.
2. The vote of a single creditor for a respite, is not a mere offer to make a new contract between the creditor and debtor, but is a *quasi judicial act* by which the rights of other creditors are to be affected. *Ibid.*
3. Any agreement of the debtor to buy the vote of a creditor by giving security for the payment of his debt, must be considered as fraudulent, and the creditor whose vote is thus bought, cannot recover the amount of his debt against the surety furnished by his debtor, as the contract must be considered as a perversion of the course of justice, and a fraud upon the court charged with the homologation of the deliberations of the creditors. *Ibid.*
4. The creditor of an insolvent cannot litigate his demand for a privilege in a separate suit against the syndic. The privilege must be settled contradictorily with all the creditors upon a tableau of distribution filed by the syndic. *Tenny v. Provosty*, 221.
5. A creditor who has a privilege on property surrendered by an insolvent to his creditors, has a right to obtain an order for the sale of the property for cash, to satisfy his debt, but the proceeds of the sale are to be distributed upon a tableau filed and homologated. *McRae v. His Creditors*, 229.
6. Where an insolvent has given an unjust preference to one creditor over the others, it is for the syndic to bring an action to annul the contract by which such preference is obtained. *Keane v. Goldsmith*, 349.
7. A person not a creditor cannot complain. *Ibid.*
8. Where a judgment has been rendered, accepting a surrender made by an insolvent debtor, and granting a stay of proceedings, according to the provisions of the 6th and 7th sections of the Act of 1855, and the Articles of the Civil Code 3051 et seq., the notice given to creditors in compliance with the above mentioned law, cannot, in case of informality in the return of the officer, as to the mode of making the service, prejudice or affect the stay of proceedings granted by the court. *Hanney v. Healy*, 424.
9. If a creditor wishes to question the legality of such proceedings, he cannot do so unless by a direct action to that effect. *Ibid.*
10. The rights of property of an insolvent are vested by law in the syndic of his creditors. *Dubois v. Xiques*, 427.

INSOLVENCY AND INSOLVENT PROCEEDINGS (*Continued*).

11. In a suit brought by a lessor against the syndic of an insolvent lessee, although the lessor's privilege can only be regularly considered upon a tableau of distribution, yet a prayer for general relief in the petition, will enable the court to reserve the rights of all parties interested in the matter. *Ibid.*
12. Where property has been seized and sold under a judgment, for the benefit of certain creditors, the money remaining in the hands of the Sheriff, and the debtor takes advantage of the Insolvent Act, before the decision of the claims of the various parties to the thing seized, the money thus held by the Sheriff will become part of the assets of the insolvent, and is subject, like all the rest of the property, to be litigated *in concursa*.
Lyons v. McRae, 438.
13. Where a third opposition has been filed, claiming a privilege upon the proceeds of the thing seized, and there is a surrender before judgment in the suit, this litigation must necessarily be referred to be tried with the other insolvent proceedings. *Ibid.*
14. Article 1983 of the Civil Code, which obliges a creditor who has been preferred, to share the loss ratably with the complaining creditors, gives the right to compel them so to do, only to those creditors whose debts were either due or would fall due before that of which the payment was anticipated by the debtor in insolvent circumstances.
Brother v. Canal Bank, 475.
15. In order to succeed in a suit to make the preferred creditor contribute ratably, the actors must specially allege the nature of their debts, and prove themselves to have been creditors within the meaning of the Article. *Ibid.*
16. The syndic of an insolvent cannot bring such a suit. *Ibid.*
17. Charges of fraud in an opposition to the application of an insolvent to be allowed the benefit of the laws of this State in favor of insolvents debtors, should be clearly enunciated and specifically made.
Beste v. His Creditors, 516.
18. In a suit for the recovery of money, the defendant having made a surrender, his syndic was made a party, and judgment rendered in favor of the plaintiff—*Held*: That it was irregular, that all further proceedings should have been suspended, and the plaintiff's claim cumulated with the insolvent proceedings.
Fabre v. McRae, 648.
19. The syndic of an insolvent may plead in his answer to oppositions filed to his tableau of distribution, any legitimate defence against the claims of the opposing creditors, such as usury and want of consideration, &c.
Walling v. His Creditors, 670.
20. The opposition in such case is a suit to establish a money demand, and the defence cannot be barred by prescription. *Ibid.*

See CONFLICT OF LAWS—*Scott v. Bogart*, 261.

See PRESCRIPTION—*Morgan v. Melaye*, 612.

See SHERIFF—*Succession of David*, 730.

INSURANCE.

1. Where the insurance is against river risks, and it is shown that the loss was from a peril of the river, and a possible cause is specified, it being also shown that the vessel was sea-worthy, the plaintiff (the insured) has done all in his power and has made out his case.

Marcy v. Sun Insurance Company, 264.

2. The liability of the insurer, except so far as limited by the policy, must be judged of by the nature of the property insured, the risks to which it was subjected, and the natural accidents to which it is liable. *Ibid.*

3. Where the vessel is sea-worthy, and there is no suggestion and proof of fraud, the plaintiff is not bound to establish the identical cause of the loss, but may show a possible cause. *Ibid.*

4. When an open policy of insurance is made out in the name of *D. L. S.* "for account of whom it may concern," and a clause is inserted to the effect, that the "*insurance is on merchandise, to cover all shipments to the address of the assured, from the time of shipments, and risks to be reported as soon as known*"—*Held*: That to recover under such a policy the value of a lost shipment, it must be shown that it was made to the address of the assured, or if made to the address of another person, that the risk was reported by him.

Shearer v. La. Mutual Insurance Co., 797.

See COMMON CARRIER—*Murrell v. Dizey, 298.*

INTEREST.

1. When a party in settlement of a debt pays, through error, compound interest in addition to the amount and interest really due—*Held*: That he is entitled to recover the difference between the amount really due and the debt at compound interest as collected. *Major v. Tardos, 10.*

2. In the absence of a written agreement to pay eight per cent. interest on an account, legal interest only can be recovered from judicial demand.

White v. Jones, 681.

See INJUNCTION—*Raiford v. Wood, 116.*

See SALE, JUDICIAL—*Footman v. Erwin, 149.*

See BILLS AND NOTES—*Weems v. Ventres, 267.*

See TAKES—*New Orleans v. Fisk, 862.*

INTERROGATORIES.

1. Where defendant, in his answer in the cause, which was sworn to, responded substantially to the interrogatories propounded in plaintiff's petition—*Held*: To be sufficient. *Wade v. Newton, 271.*

2. Where a cause has been previously put at issue, and the object of filing interrogatories is simply to procure proof, and not to bring the party into court, the consent to a continuance by defendant, and the declaration of plaintiff's counsel that he will amend his petition and propound interrogatories accordingly, is not an agreement that binds the party to amend, if he subsequently finds that he has sufficient proof without, he is not bound by such consent to propound interrogatories in order to be permitted to obtain judgment. *McKnight v. Connell, 396.*

INTERROGATORIES (*Continued*).

3. In such a case the want of service of the interrogatories is not one of those vices of form which give rise to the action of nullity. *Ibid.*
4. A party interrogated as to whether there was not a balance due him at a certain time, has a right to add to his acknowledgement of such balance, that it no longer exists, having been discharged by payment.
Bowers v. Hale, 419.
5. Where a party is interrogated on facts and articles, and his answer is ambiguous, but the fact sought to be established is rendered reasonably certain by the circumstances to which the party interrogated refers in his answers, it will be considered as sufficiently proven.

Swan v. Moore, 833.See PRESCRIPTION—*Saundeer v. Carroll*, 27.See PRACTICE—*Hale v. Saunders*, 643.*Pickett v. Vance*, 668.

JUDGMENT.

1. A judgment will be annulled, which was rendered against a party on whom no service of the petition and citation was made, but for whom an answer was filed by an attorney at law without authority. By our law, which differs from the common law, the attorney in such a case is responsible to the plaintiff for having undertaken without authority to represent him in a court of justice.
Marvel v. Manouvrier, 3.
2. A judgment which decrees that a writ of attachment under which property has been seized be quashed, and that the bond given for the release of property attached under the writ be cancelled and annulled, is a judgment in favor of the surety upon the bond thus cancelled and annulled, and will become final and irrevocable by the lapse of two years from its date without any appeal being taken therefrom.
Love v. McComas, 201.
3. A judgment afterwards rendered on appeal, in subsequent proceedings in the same suit, by which the attachment is maintained, will not affect the surety who was not a party to the appeal.
Ibid.
4. Where a judgment was rendered on an act of mortgage in which it was stipulated that it was to secure the payment of the notes, and any costs that may be incurred in collecting the same—*Held*: That a receipt in full of the amount of the judgment, and consent that satisfaction of the judgment should be entered up, was a release from any obligation under the contract to reimburse money paid by the plaintiff to counsel in prosecuting the collection of the debt.
McCaleb v. Fluker, 316.
5. A party has no right to enjoin the execution of a judgment, absolute and unconditional as to the matters it professed to decide, during a litigation as to other matters in controversy reserved by the judgment.
Hereford v. Babin, 333.
6. An unliquidated claim cannot be pleaded, by way of compensation and injunction, against a judgment.
Ibid.
7. A party acting in good faith cannot be deprived of a judgment on such grounds.
Ibid.

JUDGMENT (*Continued*).

8. Where the judgment does not liquidate the sum due by the party against whom it is rendered, it wants an essential requisite of a judgment final.
Peet v. Whitmore, 408.
9. A judgment rendered without reasons is unconstitutional.
Selby v. Levee Commissioners, 434.
10. The rendition of a judgment on insufficient evidence is not a cause for which the *action of nullity* will lie, in the absence of all proof of fraud or ill practice on the part of the plaintiff. *Taliaferro v. Steele*, 656.
11. The invalidity of a *bail bond* is not one of the causes for which an action will lie, to annul a judgment rendered on it. *Ibid.*
12. The remedy in both of the above cases is by appeal. *Ibid.*
13. The date of a judgment may be fixed by reference to the record of proceedings in the case, and it is not necessary that the Judge should sign it in open court, or that it should be stated that it was read in open court.
Cooper v. Cooper, 665.
14. When the jury find for the plaintiff "the full amount claimed," the amount must be ascertained from the allegations and prayer of the petition.
Newton v. Ker, 704.
15. A judgment in a petitory action will be received as proof against those who were parties to the suit as warrantors.
Williams v. Leblanc, 757.
16. Relief by amendment of the judgment of the court below cannot be extended to one appellee against another appellee. *Ibid.*
17. When a judgment on a rule passes finally upon the merits of a controversy between parties, it will have the same effect as a decree rendered in any other form of proceeding.
Foss v. Brentel, 798.
18. Judgments are interpreted with reference to the pleadings and the nature of the obligations on which they have been rendered.
Bell v. Massey, 831.
19. When parties are sued on an obligation on which they are jointly and severally bound, judgment will be rendered accordingly against them, without any allegation or prayer in the petition for a judgment *in solido*. *Ibid.*
20. Where a suit is brought against persons bound jointly and severally according to law as commercial partners, a judgment rendered against them carries *solidarity* with it even when not expressed in it. *Ibid.*

See PARTNERSHIP—*Austin v. Vaughan*, 43.
 See PRACTICE—*Noland v. Bemiss*, 49.
 See ATTACHMENT—*Story v. Jones*, 73.
 See PRESCRIPTION—*Van Wickle v. Garrett*, 106.
 See EXECUTOR, &c.—*Pauline v. Hubert*, 161.
 See SUCCESSIONS—*Sturges v. Sheriff*, 231.
 See JURY—*Hampton v. Walterston*, 239.
 See INTERROGATORIES—*McKnight v. Cannell*, 396.
 See INJUNCTION—*Perry v. Kearney*, 400.
 See INSOLVENCY—*Hanney v. Healy*, 424.
 See RES JUDICATA—*Fisk v. Parker*, 491.
 See EXECUTION—*Zimmerman v. Bartchy*, 520.

JURIES AND JURORS.

1. Where an instruction to the jury was asked for, which might have been understood by the jury as intimating the opinion of the Judge upon the facts of the case—*Held*: That such instruction was properly refused; that the instructions of the Judge to the jury should be embodied in a form to avoid instructing the jury upon the facts.
Rivière v. McCormick, 139.
2. The verdict of a jury in these words, "Verdict in favor of plaintiff," is not sufficient to form the basis of the judgment.
Hampton v. Watterson, 239.
3. An opinion formed and expressed by a juror in a criminal case, which is based wholly upon rumor, and when there is no bias or prejudice in the mind of the juror, is not a disqualification. *State v. Bunger*, 461.
4. The jurisdiction of the Supreme Court being limited to questions of law in criminal cases, it must appear clearly by a bill of exceptions to the refusal of the Judge to sustain a challenge of a juror for cause, that no question of fact but one purely of law was presented for decision.
Ibid.
5. The statutes regulating the arrest and commitment of persons accused of crimes and misdemeanors, do not require the previous examination of a prisoner before a committing magistrate, in order to authorize the Grand Jury to inquire into the matter and find a bill of indictment. *Ibid*.
6. Where the regular session of a court is adjourned over by order of the Judge at chambers, the jurors summoned for the first week of the court, are bound to attend, and serve for the first week of the actual session of the court thus adjourned over. *Ibid*.
7. The accused, in a criminal case, is not entitled to service of the list of talesmen. *Ibid*.
8. Where a juror can be challenged for cause, the right must be exercised before the juror is sworn, and a verdict cures the defect. *Ibid*.
9. Where the jury cannot be completed by talesmen from among the bystanders, recourse may be had to other persons not within the presence of the court. *Ibid*.
10. The objection was stated in the bill of exceptions to the refusal of the Judge to grant a new trial, that such talesmen were summoned during the time the court was adjourned—*Held*: That there was no error in the ruling of the court below, and that if any complaint was made by the accused against the Sheriff for want of impartiality in summoning such talesman, it was a matter of fact to be submitted to the Judge, and rested in his sound discretion. *Ibid*.
11. The Judge may properly refuse to charge the jury as requested by counsel, on the ground that the charge asked for is the same in substance with that already given, with the only difference of being shaped in a manner calculated to mislead the jury. *Ibid*.
12. In a capital case it is competent for the State to show the disqualification of a juror by interrogating the juror himself as to any conscientious scruples he may have against inflicting the punishment of death.
State v. Mullen, 570.

JURIES AND JURORS (*Continued*).

13. When, in a criminal case, the question was asked a juror, examined on his *voire dire*, "*Have you or not formed or expressed the opinion, from what you have heard of the case, that the defendant is guilty?*"—*Held*: That the question was not in legal form, and that the District Judge in refusing to allow it to be answered, did not abuse the discretionary power to overrule interrogatories not in legal form. *State v. Bennett*, 651.
14. The 3d section of the Act of 1855, relative to the drawing of juries, fully recognizes the right of the court to order talesmen to be summoned after the regular panel has been exhausted; and the prisoner has no right to require that the list of talesmen summoned should be served upon him two days before the trial. *Ibid.*
15. On the examination of a juror on his *voire dire*, the question was asked him, "*In case the defendant was found guilty of murder, have you made up your mind as to what degree of punishment ought to be inflicted upon him?*"—*Held*: That the question was not properly put, and the District Judge did not err in refusing to allow it to be answered. *Ibid.*
16. A list of jurors, headed "*List of Jurors for the third and fourth weeks of the October term of the District Court of the parish of Caddo,*" duly served on the prisoner, held to be a sufficient compliance with the law. *State v. Ward*, 673.
17. An impression entertained by a juror as to the guilt of the accused, is not sufficient to disqualify him. *Ibid.*
18. *Held*: That the court below did not err in refusing to allow the prisoner's counsel to ask a juror whether he had not made up his mind as to what punishment should be inflicted in case the prisoner should be convicted. The question also was properly overruled, whether, if the juror went into the jury-box in his present state of mind, he went there with the belief that the defendant was guilty of murder, as charged in the indictment. *Ibid.*
19. The Act of 1858, making it the duty of the District Judges to empanel the Grand Jury on the *first day* of the term, is merely *directory*, and if any sufficient obstacle exists to prevent the empanneling on the first day, it may be done on a subsequent day. *State v. Davis*, 678.
20. Where the questions involved in a suit regard the relative situation of the lands of plaintiff and defendant, and the natural drainage of the soil, these being matters peculiarly within the cognizance of a jury of the vicinage, their verdict is entitled to great weight. *Williams v. Bridge*, 721.
21. Although the statute has fixed the number of Grand Jurors at sixteen, it is not necessary that sixteen should be in attendance at the time of finding an indictment: that number is not sacramental. *State v. Swift*, 827.
22. An objection to the mode of drawing and empanneling the Grand Jury cannot be made the ground of a motion in arrest of judgment. *Ibid.*

See CRIMINAL LAW—*State v. Lindsay*, 42.

State v. Roomals, 278.

JURISDICTION.

1. Where the proceeding is *in rem* founded on a privilege, the defendant cannot except to the jurisdiction of the court, on the ground of his domicile being in a different parish from that where the seizure was made.
Gauls v. Schooner Osceola, 54.
2. The 9th section of the Act of 1855, relative to District Courts for the parish and city of New Orleans, declaring that all successions shall be opened and administered in the Second District Court, the other District Courts of New Orleans have no jurisdiction over suits instituted against a succession.
Smith v. Adams, 409.
3. On the removal of a tutor from one parish to another, the Judge of the *new domicile* of the tutor is the one having jurisdiction over the affairs of the minor.
State v. Petit, 565.
4. The District Courts out of the parish of Orleans have neither appellate nor original jurisdiction in the trial of slaves accused of crimes or offences, nor can they interfere for the purpose of carrying into effect the sentence of the tribunal established by law for their trial.

Hardy v. Voorhies, 776.

See SUCCESSION—*Hereford v. Babin*, 333.

See GARNISHMENT—*Rose v. Whaley*, 374.

See PROHIBITION—*State v. Judge*, 504.

See CRIMINAL LAW—*State v. Peter*, 521.

See WILLS—*Atkinson v. Rogers*, 633.

See PUBLIC LANDS—*Mast v. Hamilton*, 774.

See PRACTICE—*Shiff v. Carprette*, 801.

JUSTICES OF THE PEACE.

See CRIMINAL LAW—*State v. Peter*, 521.

LETTING AND HIRING.

1. The lessee of mortgaged property holds his lease subject to a dissolution by the judicial sale, which may take place to enforce the mortgage.
Barelli v. Szymanski, 47.
2. If after the sale such lessee continues to enjoy the property, he will be bound for the rent to the purchaser, notwithstanding he may have paid his negotiable notes, in the hands of third persons, which were given in consideration of the rent at the time the lease was executed.
Ibid.
3. There is nothing inconsistent in a demand for the dissolution of a lease being coupled with a demand for the rent up to the time that possession is delivered to the lessor.
Dubois v. Xiques, 427.
4. The payment of rent in pursuance of the terms of the contract of lease, is an *essential engagement* on the part of the lessee, and his non-compliance with it gives to the lessor a right to sue for the dissolution of the contract.
Kron v. Watson, 432.
5. Where the goods of third persons are placed, with their consent, in a leased house or store, they become subject to the pledge of the lessor.
Twitty v. Clarke, 503.
6. The failure of a lessor to maintain premises leased in a tenantable condition dissolves the lease, although such lessor be not at fault.

Coleman v. Haight, 564.

LETTING AND HIRING (*Continued*).

7. Compensation cannot be allowed for services rendered, when the procuration is gratuitous. *White v. Jones*, 681.
8. A party in possession of property as a lessee, when sued in a petitory action for the property, should make his lessor a party defendant to the action, and ask to be discharged; he cannot defend the suit by calling in warranty his lessor's vendor, without making the lessor a party, or entering an appearance for him. *Young v. Chamberlin*, 687.
9. When a party sues on a *quantum meruit*, and the petition discloses an express contract, he can only recover on the contract, although he may be permitted to prove the value of his services. *Ibid.*
10. The date is not of the essence of a contract of letting and hiring, and proof of the fact that it was made on a day different from that alleged is sufficient to sustain it. *Gribble v. McKleroy*, 793.

See NEW ORLEANS—*Hiestand v. New Orleans*, 330.

See NOVATION—*Vigné v. Gouaux*, 344.

See EVIDENCE—*Colin v. Levy*, 355.

See INSOLVENCY—*Dubois v. Aiques*, 427.

See PRESCRIPTION—*Culmes v. Duplantier*, 814.

LEVEES AND ROADS.

1. The report of the jury of freeholders appointed by the Police Jury, under the Act of the Legislature "relative to the building of levees in the parish of Tensas," to estimate the amount of damage that may be done to a proprietor where a new levee is to be built, and also the benefit that may arise from the construction of the levee, is conclusive against the Police Jury, unless it is contested upon the ground of error or fraud. But to render it conclusive, the formalities of the law must be strictly complied with. *Inge v. Police Jury*, 117.
2. The prescription of one year against actions arising from offences and quasi-offences is not applicable to an action for damages for the partial destruction of property occupied by the construction of a levee under legal authority. *Ibid.*
3. Since the Act of the Legislature of 1858, ordering back into the treasury all funds in the hands of Swamp Land Commissioners, proprietors whose levees have caved in or have been destroyed by the action of the current of the river, cannot require the Commissioner to proceed under the 10th section of the Act of the Legislature of the 16th of March, 1854, to construct said levees without a special appropriation by the Legislature for that purpose. *Robertson v. Caldwell*, 864.
4. The general appropriation to the Swamp Land Board, by the Act of the Legislature of 20th of March, 1856, is in contravention of the 94th Article of the Constitution, which declares, "that no money shall be drawn from the Treasury, but in pursuance of a specific appropriation made by law, nor shall any appropriation of money be made for a longer term than two years." *Ibid.*

See PRIVILEGE—*Police Jury v. Croxely*, 164.

See TAXES, &c.—*Selby v. Levee Commissioners*, 434.

See CONSTITUTIONAL LAW—*Wallace v. Shelton*, 408.

LIBEL AND SLANDER.

See DAMAGES—*Harry v. Constantin*, 782.

See EVIDENCE—*Rayne v. Taylor*, 406.

MANDAMUS.

1. A *mandamus* will not be granted by the Supreme Court, to compel a District Judge to rescind an order granting an appeal.

State v. Judge Fourth Dist. Court, 60.

See OFFICE AND OFFICER—*Hommerich v. Hunter*, 225.

MARRIAGE.

1. A marriage which was celebrated in this State while under the dominion of Spain, may be established by reputation. *Cole v. Langley*, 770.

MINORS.

1. In matters relating to the interests of minors much discretion must be exercised by the Judge of the Second District Court, but a judgment of nonsuit only, should be rendered in a case where the representative of minors has improperly dispensed with the production of the proof necessary to establish a claim against them. *Hauley v. Crozier*, 304.
2. The right of a minor emancipated by marriage, to contract debts within the amount of his annual revenues, is not affected by the fact that the minor ran away and contracted marriage without the consent and against the will of the tutor. *Boyd v. Frantom*, 691.
3. Where a suit is brought by a merchant on an account rendered against minors for supplies furnished, advances, &c., and a privilege claimed upon their crop, and it appears that he had dealt with the tutor in his *individual capacity*, and the account was made in his name, and no contract is shown to have been made with him as tutor on behalf of the minors—*Held*: That he can only recover so much as is shown to have enured to the benefit of the minors, and then only to the extent of their revenues. *Payne v. Scott*, 760.
4. Article 343 of the Civil Code, which provides that the expenses incurred in the support and education of minors shall not exceed the amount of their revenues, without the authority of the court, on the advice of a family meeting, applies also to expenses incurred in the management and preservation of their estates. *Ibid*.
5. Where the tutor of a minor has created an indebtedness, without authority of law, which exceeds the revenues of the minor, the creditor, to recover, must show that the indebtedness was absolutely necessary, either for the support of the minor, or the preservation of his property, and that the supplies furnished enured to the benefit of the minor.

Sanford v. Waggaman, 852.

See SUCCESSION—*Chillé v. Gassen*, 5.

See PARTITION—*Shaffet v. Jackson*, 154.

See SALE, JUDICIAL—*Robert v. Brown*, 597.

See APPEAL—*Préjean v. Robin*, 788.

MORTGAGES.

1. The existence of the clause *de non alienando* in an act of mortgage, does not change the rule that a sale of succession property regularly made under a judgment of the Probate Court discharges the mortgages on it given by the deceased. *Michel v. Delaporte*, 91.

MORTGAGES (*Continued*).

2. The wife was bound *in solido* with her husband in an act of mortgage to secure a subscription to the capital stock of the Clinton and Port Hudson Railroad Company, to which mortgage the State of Louisiana was subrogated. The State afterwards caused the property to be sold under execution against the husband, as a defaulting Tax Collector, and the wife, through the intervention of a third person, became the purchaser at the sale. *Held*: That such a sale did not extinguish the mortgage of the State.
Hawkins v. McVea, 339.
3. Where the production of a certificate of mortgage is waived, notice of mortgages existing of record will be presumed. *Ibid*.
4. Sections second and third of the Act of 1855, require for the validity of acts of mortgage by married women, that the wife should be examined at chambers by the Judge of the district or parish where she resides, separate and apart from her husband, touching the objects for which the debt is contracted, and that the Judge, upon being satisfied that the debt is solely for her separate advantage, or for the benefit of her separate or dotal property, should furnish her with a certificate to that effect, which shall be annexed to the notarial act.
Bowers v. Hale, 419.
5. A mortgage being indivisible and only accessory to the debt, a decree cannot properly be rendered for the sale of the property mortgaged, in an action *via ordinaria*, without parties before the court against whom a judgment may be rendered for the *whole* debt. *Saloy v. Cheznaidre*, 567.
6. A holder of a note given in payment of the price of property sold for the purpose of defrauding creditors, and secured by mortgage upon the property sold, cannot enforce his mortgage to the prejudice of creditors whose right of mortgage originated before the fraudulent sale and execution of the note.
Bowman v. McKleroy, 587.
7. The recording of a judgment against a debtor, in a parish where he has negroes attached to a plantation, of which he is part owner, creates a judicial mortgage upon the slaves, when the owner is not domiciliated in the State. *Ibid*.
8. Slaves under seizure cannot be hired out by the Sheriff, unless by the consent of parties, and the mortgagee is not entitled to receive hire for the slaves during the time that they may be under seizure. *Ibid*.
9. A deed of trust executed in Mississippi and recorded in this State, which expressed that it was given to secure a certain amount, and also to secure future advances that might be made, cannot be enforced here, against the property mortgaged, to the prejudice of other mortgage creditors, except for the amount specified. *Ibid*.

See HUSBAND AND WIFE—*Moussier v. Zunz*, 15.

Wood v. Harrell, 61.

Succession of Penny, 194.

See LEASE—*Barelli v. Szymanski*, 47.

See SALE, JUDICIAL—*Yeatman v. Erwin*, 149.

Young v. Hays, 654.

See BANKS—*Haynes v. Harbour*, 287.

See ATTORNEY AT LAW—*Alexandrie v. Saloy*, 327.

See BILLS AND NOTES—*Rice v. Davis*, 435.

See SHERIFF—*Succession of David*, 730.

NEW ORLEANS.

1. Assuming that the tax of \$250 assessed against every person who boards or rents rooms to lewd and abandoned women is legal, the city authorities might be authorized to impose a penalty upon all persons who should set up the occupation or open a house of the description, without first taking out a license. This would be a mere police regulation.
New Orleans v. Costello, 37.
2. The corporation, however, exceeds its powers in imposing imprisonment of not less than one calendar month, by the ordinance of March 10th, 1857.
Ibid.
3. Section 3d of the ordinance authorizing a prosecution before the Recorder, does not violate Article 103 of the Constitution.
Ibid.
4. The fourth section of the ordinance under which this suit is instituted, as amended by the first section of the ordinance of 27th of March, 1857, does appear to violate sections 103 and 105 of the Act of 1856, pp. 158, 159.
Ibid.
5. The ninety-second section of the Act of 1855, p. 144, relative to crimes and offences, does not prevent the city from levying a tax upon boarding houses kept for these people, provided they do not license houses of this class.
Ibid.
6. A proprietor has no right to alter the elevation of the banquette before his house in the city of New Orleans, without having first obtained the consent of the municipal authorities.
Dudley v. Tilton, 283.
7. Where the language of a city ordinance is ambiguous and susceptible of two different significations, one of which is against law, the court will ascertain and give effect to the intent and meaning of the ordinance, provided the same be not contrary to law.
Merriam v. New Orleans, 318.
8. The city ordinance which declares that "a tax of sixty dollars shall be assessed and collected from every keeper of a billiard table, *the whole tax being levied on each and every billiard table*," was intended to impose a license tax upon the particular calling or business of keeping a billiard table, and not a property tax upon the table itself.
Ibid.
9. Such a tax is equal and uniform upon all persons engaged in that kind of business.
Ibid.
10. The city of New Orleans is a political corporation recognized by the Constitution of the State, to which the Constitution has imparted a portion of the executive and judicial functions of the government.
Hiestand v. New Orleans, 330.
11. The Common Council of New Orleans is within the sphere of its constitutional and legal attributions, a Legislature; and in the exercise of its power in relation to the collection of taxes due to the city, may empower a particular individual to collect the same for a fixed compensation, but they have the right at any time to change, modify, or repeal a resolution conferring such power, with the sole condition, that the city shall be liable for any compensation earned under and in pursuance of the resolution before its repeal.
Ibid.

NEW ORLEANS (*Continued*).

12. The repeal of such a resolution is not the violation of a contract. *Ibid.*
13. The commission of five per cent. under the Act of the Legislature of 1852, to the Assistant City Attorney, upon tax bills collected by suit, is due to the officer who obtains the judgment, and not to the one who collects the amount of it. *Ibid.*
14. The law of hiring personal services for a term, has no application to such dealing between parties; if any contract would be thereby created, it would be the contract of mandate, and revocable at the will of the principal. C. C. 2997. *Ibid.*
15. The city, as a corporation, has control over the public places and highways within its bounds, and it is the province of the corporation, and not of a judicial tribunal, to determine what improvements shall be made in the streets and canals of the city.
Inhabitants of Melpomene street v. New Orleans, 452.
16. The streets of an incorporated city are destined for public use, but not for a particular mode of public use. *Brown v. Duplessis*, 842.
17. The city of New Orleans has the right to sell the right of way in the streets to private individuals, for a specified time, with the privilege of laying rails and running horse cars over them, according to a tariff to be fixed by the Common Council; this right is conferred upon the city by the Act incorporating it, and upon all incorporated cities or towns in the State, by the Act of 1855, relative to the organization of corporations for works of public improvement. *Ibid.*

See APPEAL—*New Orleans v. Boudro*, 303.

See TAXES, &c.,—*New Orleans v. Hart*, 803.

NEW TRIAL.

1. Where by due diligence it might have been discovered that a witness in the case, who had been examined on his *voir dire* and had testified that he had no interest, was security for the costs, a new trial will not be granted on the ground of such discovery being made after the trial.
Chiappella v. Brown, 189.

NOVATION.

1. Novation does not take place unless by the terms of the agreement, or a full discharge of the original debt. *Gails v. Schr. Osceola*, 54.
2. A debt is not novated by a check on a bank given in payment of it.
Bordelon v. Weymouth, 93.
3. The assumption of a debt by a new firm succeeding to the business of one that has been dissolved, the transfer of the debt to the books of the new firm, and the assent of the creditor to the arrangement, will not novate the debt without an express agreement to discharge the original debtor.
Carrière v. Labiche, 211.
4. The substitution of a new lessee to the old one, accompanied by the discharge of the latter, is a novation. under the second section of Art. 2185 C. C.
Vignié v. Gouaux, 344.
5. When a party takes accounts from his debtor to be credited if collected, otherwise to be returned, with full power to settle them in any manner he

NOVATION, (*Continued*).

can, taking a note on time for an account, it operates no novation and no payment. *Locke v. Mackinson*, 361.

6. In a transaction by which a draft is substituted in the place of a note, to constitute novation of the debt, it must be established clearly that it was the intention of the parties that the draft should be taken in absolute payment of the note. *Helme v. Middleton*, 484.

See PRIVILEGE—*Succession of Kercheval*, 457.

OFFICE AND OFFICER.

1. The Treasurer of the State is not vested with the same powers as the Auditor to audit, adjust and settle claims against the State. He cannot refuse to pay a warrant drawn upon him in a legal form by the Auditor, if there are funds in the treasury appropriated by law for the purpose specified in the warrant. *Hommerich v. Hunter*, 225.
2. The writ of *mandamus* is the proper remedy to be exercised by the holder of a warrant drawn by the Auditor on the Treasurer, to enforce the performance of the duty imposed by law on the latter officer. *Ibid*.
3. A party cannot recover from a Notary Public, for having neglected to protest a note legally, when, by his own laches, he has put it out of his power to subrogate the Notary to his rights as they existed at the date of protest. *Emmerling v. Graham*, 389.

See CRIMINAL LAW—*State v. Hunter*, 71.

See NEW ORLEANS—*Hiestand v. New Orleans*, 330.

See EVIDENCE—*Sampson v. Noble*, 347.

See LETTING AND HIRING—*Twitty v. Clark*, 503.

See TAXES, &c.—*New Orleans v. Hart*, 803.

OVERSEER.

See CONTRACTS—*Kessee v. Mayfield*, 90.

PARENT AND CHILD.

1. The reputed father of a child, who has introduced the mother as his wife and the child as his son, will not be permitted afterwards to bastardize such issue. *Green v. Green*, 39.

PARTITION.

1. The father, although he has not been confirmed as tutor of his minor children, may provoke a partition between himself and his minor children, by the appointment of a curator *ad hoc* to the minor, under Art. 116 of the Code of Practice. *Shaffet v. Jackson*, 154.
2. The inventory of the property to be divided, may be made after the sale is ordered. *Ibid*.
3. Where minors are sued for a partition, a family meeting is not necessary to authorize the suit, or to fix the terms of sale, and it is not necessary the property should sell for its appraised value to make the sale valid. *Ibid*.
4. A motion to dismiss an opposition filed to an act of partition is not in the nature of an exception, which admits the allegations contained in a petition, and does not dispense with proof on the part of the opponent. *Morris v. Harrell*, 185.

PARTITION (Continued).

5. An agreement in the act of partition, that the same shall be irrevocable, is, in the absence of proof of error or fraud, binding on the parties to it.

Ibid.

See SALE, JUDICIAL—*Hache v. Ayraud*, 178.

See PLEADING—*Mavor v. Armant*, 181.

See WILLS—*Weber v. Ory*, 537.

See PARTNERSHIP—*King v. Wartelle*, 740.

PARTNERSHIP.

1. The heirs of a deceased partner are not bound by the rigid rules as to notice of dissolution of the partnership applicable to the withdrawal of a partner from the firm, who would still be liable if he permitted his name to remain in the partnership.

Price v. Matthews, 11.

2. The continuance of the deceased partner's name, as part of the firm name, is not of itself a cause of continuing liability on the part of the heirs.

Ibid.

3. A partner cannot obtain judgment against his copartners for a debt due him by the partnership, when it is shown that the partnership accounts are unsettled, and that the judgment asked for will not have the effect of a final liquidation of the partnership affairs.

Austin v. Vaughan, 43.

4. The interest of a partner in a particular thing or piece of property belonging to the partnership, cannot be seized for his individual debt, but the whole share or interest of the indebted partner in the partnership may be seized and sold subject to the payment of the partnership debt. This rule applies to a particular partnership, and is the same rule laid down as applicable to commercial partnerships in the case of *Smith v. McMicken*, 3 An. 322.

Pittman v. Robicheau, 108.

5. Where a particular item of an account claimed by the defendant in a suit for the liquidation of a partnership is not fully sustained by the evidence, a judgment will be rendered in favor of plaintiff, as in case of nonsuit, upon that particular claim.

McMichael v. Raoul, 307.

6. The natural tutor who supervises the interest of his minor child in the liquidation of a partnership of which the deceased mother of the minor was a partner, cannot claim for services rendered the partnership; he has only a claim against his ward in his account of tutorship.

Ibid.

7. Where a party purchases an interest in a commercial house, entitling him "to an equal undivided one-third interest and ownership, and to all stock of merchandize, bills receivable, and debts in book accounts on hand, due or owing to the firm on a given day, (over and above the payment of the liabilities of said firm,)" he is responsible for the debts of the house existing at the time of purchase.

C. C. 2782. Hughes v. Waldo, 348.

8. The phrase "over and above their liabilities" does not exclude responsibility from those liabilities.

Ibid.

9. In order to establish that a commercial partnership is not bound by the act of one of the partners, in any particular matter, it is necessary expressly to deny his authority, and to disclose by evidence, the nature of their commercial business.

Vienne v. Harris, 382.

PARTNERSHIP (*Continued*).

10. The surviving partner who liquidates the concern, is not entitled to a judgment for any apparent balance in his favor, until he shows a full and entire settlement of the partnership affairs. *Succession of Powell*, 425.
11. The *ordinary partnership creditors* of the owners of a steamboat have no right to be paid by preference to the individual creditors, out of the proceeds of the boat, whether these proceeds result from sales or have been received on policies of insurance. *Whipple v. Hill*, 437.
12. The liability of a partner to a third person is not increased by the fact, that an individual debt of his has been assumed by the partnership of which he is a member. *Bogereau v. Guéringer*, 478.
13. A partner cannot be made liable on a note endorsed by his co-partner with the social name, after the dissolution of the partnership, unless it is shown that he was benefited by the transaction, or authorized the endorsement. *Ibid.*
14. Under the operation of Articles 2203 and 2204 of the Civil Code, compensation does not take place between partnership and individual debts. *Key v. Box*, 497.
15. During the existence of the partnership, suit must be brought against the firm, and not against individual partners. *Ibid.*
16. An exception to this rule has been recognized in the case of a Louisiana creditor, attaching the interest of a non-resident debtor in property belonging to a foreign firm, of which he was a member, for a debt due by him individually. *Ibid.*
17. A community of profits is the criterion by which to determine the contract of partnership; but to render a party liable as a partner, he must share in the profits as *principal*, and not as a mere *agent, factor or servant*. *Hallet v. Desban*, 529.
18. When a suit is brought by the heir of one of the members of a partnership against the heirs of the other member, claiming a certain sum, and giving, in his petition, a detailed statement of the property belonging to the partnership, and of its annual revenues—*Held*: That if plaintiff has any right to the property described in his petition, and is, therefore, entitled to an account from the heirs of the surviving partner, his right, and the rendition of an account of the partnership affairs, can be determined in such a form of action as well as any other. *Held*: That such a suit is in the nature of an action for the settlement of partnership affairs, and a partition and division of the partnership effects. *Atkinson v. Rogers*, 633.
19. A law partnership is an ordinary one, and the partners are bound jointly, and not *in solido*. *Dyer v. Drew*, 657.
20. The liquidating partner of a commercial firm may sue in his own name by representing the claim sued on as arising out of the business of the late firm, so as not to deprive the defendant of any means of defence to which he would be entitled in a suit in the name of all the partners. *White v. Jones*, 681.

PARTNERSHIP (*Continued*).

21. The liquidating partner, to whom the assets have been assigned, cannot, by a release in favor of his late partner, render him a competent witness in his favor. *Ibid.*
22. In the absence of any allegation or proof of fraud, the acknowledgment of payment and release of a partnership debt by one of the partners, by an act under private signature, during the existence of the partnership, will be binding on the liquidating partner. *Ibid.*
23. The action of one partner, or his representative, against the other partner, for an account, is prescribed in ten years after the dissolution of the partnership. The amendment of a petition for an account by praying for a partition of property held in common between the partners, is allowable. *King v. Wartelle*, 740.
24. The meaning of Article 2861 of the Civil Code is, that the rules of partition among heirs, apply to partitions among partners; not that the rules governing the action of partition among heirs, apply to all actions which may be exercised by one partner against another. *Ibid.*
25. When the action is one for partition of property, and the liquidation of partnership affairs, the settlement of the accounts being an incident to the partition, the prescription of thirty years only is applicable to the case. *Ibid.*
26. Suit being brought against *R. F. and C. W.*, as composing the commercial firm of *R. F. & Co.*, and the petition and citation served on *R. F.* alone—*Held*: That the service of citation was sufficient as to both partners. *Kearney v. Fenner*, 870.
27. Where the name of one of the partners, who is sued on a note of the firm, does not appear either in the firm name or in the return of citation, the fact of his being a partner must be proved, to entitle the plaintiff to confirm the judgment by default against him. *Ibid.*

See APPEAL—*State v. Judge*, 240.

See CONFLICT OF LAWS—*Scott v. Bogart*, 261.

See PRACTICE—*Taylor v. Hancock*, 693.

See BILLS AND NOTES—*Bell v. Massey*, 831.

Helme v. Middleton, 484.

See PRACTICE—*Ridge v. Alter*, 866.

PARTY WALL.

1. A party who exercises his right of making a wall, one in common, cannot resist the demand of his neighbor who erected the same, for one-half of its value, although he may have a claim to the soil upon which more than one-half of the wall was built. *Davis v. Grailhe*, 338.

PAYMENT.

1. The deposit of the money in court, after the institution of a suit on a note, is not a payment of the note to the creditor or to any one authorized to receive it for him. *Alexandrie v. Saloy*, 327.
2. A natural obligation is a valid consideration for payment, and bars a demand for repetition. *Bowers v. Hale*, 419.

See NOVATION—*Locke v. Mackinson*, 361.

PILOTS.

1. No preëxisting commission of Branch Pilot for the port of New Orleans, is vacated by the Act of the 15th of March, 1857, entitled "an Act relative to Pilots," until the Governor has complied with the provision of the second section of the Act, and fixed, by proclamation, the number of Pilots for the port of New Orleans, and appointed the number so fixed, from among the commissioned Branch Pilots, as required by the Act.

Williams v. Payson, 7.

2. Section 15th of this Act is declared unconstitutional, as it relates to an object not expressed in the title.

Ibid.

PLEADING.

1. Where plaintiffs bring a petitory action to recover a slave, alleging that their right of property in the slave was derived by inheritance from their mother, and subsequently attempt to amend their petition by demanding in the alternative, if the court should be of opinion that the slave was the community property of their father and mother, that they be decreed to be the owners of one-half of the slave claimed, and at the same time expressly adhere to their original demand—*Held*: That the two demands are inconsistent, and that the District Court did not err in rejecting the alternative demand.
2. In a petitory action, if the title set up by defendant has a common origin with that of the plaintiff, the defendant cannot allege the nullity of plaintiff's title.
3. The cumulation of a demand for the partition of succession property with a demand for the partition of property held in common, where there is no privity of estate between all the parties, plaintiffs and defendants, is not authorized by the rules of pleading.
4. An amendment should be presented before going into trial.
5. An exception taken by a defendant to a petition, on the ground that his name has been incorrectly stated, will be regarded as frivolous, when his true name is not disclosed.
6. A frivolous exception cannot prevent a cause from being put at issue, when an answer has been filed with the exception.

Wood v. Harrell, 61.

Loyd v. Mortee, 107.

Mavor v. Armant, 181.

Cohn v. Levy, 355.

Broadwell v. Kelly, 456.

Ibid.

See CORPORATIONS—*Bennett v. New Orleans*, 120.

PLEDGE.

1. In the contract of pledge, the mention of the amount of the debt intended to be secured, required by Article 3125 of the Civil Code, is in no sense a formality. It is essential to the contract, and as such not abolished by section 2d of the Act of 1855, relative to pledges.
2. A broker to whom a note was given to sell, being in lawful possession of it has the right to pledge it.
3. The pledgee of the note has the right to demand and receive the money due on it, and to sue for it in his own name.

Cater v. Merrell, 375.

Dix v. Tully, 456.

Ibid.

POLICE JURY.

1. There can be no vested interest in any inhabitant in the public highways and bridges, as that also would imply a right to control the action of the Police Jury. Citizens are subject to the legal ordinances of the Police Jury as they are to the laws. *Stewart v. Police Jury*, 69.

POSSESSION.

1. A person in possession under the first recorded title in the parish where the land is situated, must be quieted in his possession, unless the claimant have a superior title. *Pierse v. Blunt*, 345.
2. Possession under an act of sale not recorded, is not sufficient notice to creditors and subsequent purchasers, to defeat the operation of the registry laws. *Moore v. Jourdan*, 414.

See PRACTICE—*Arrowsmith v. Durell*, 849

PRACTICE.

1. A judgment by default having been duly confirmed, and the judgment signed after the lapse of three judicial days, the defendant took a rule on the plaintiff to set aside the judgment, on the ground that an answer had been filed after the submission of the cause and before its decision, which rule was made absolute and a new trial granted. *Held*: That the plaintiff not having appealed from the judgment on the rule, it could not be revised on the appeal taken by the plaintiff from a subsequent judgment in favor of defendant. *Noland v. Bemiss*, 49.
2. Where a total want of consideration is alleged to avoid an act, and only a *partial* want of consideration is shown by the evidence, without any tender of restitution of what was received, the plaintiff will be nonsuited. *Van Wick v. Rist*, 56.
3. He who seeks equity, must do equity. *Ibid.*
4. The practice of introducing all the *mortuaria* of a succession in mass, when it is only intended to prove a fact or a date, is abusive, inasmuch as it is calculated to create unnecessary costs, and to confuse the issues. *Succession of Broom*, 67.
5. Where a cross-interrogatory which is pertinent and material has not been answered, the deposition should be excluded. *Nicholson v. Desobry*, 81.
6. The party taking the deposition can always protect himself from surprise by taking the rule, or filing the notice allowed by the 17th section of the Act of 1839, which embraces objections of this character. *Ibid.*
7. If the cross-interrogatory which is not answered is not relevant, the deposition should not be excluded. *Ibid.*
8. Where the damages claimed are the consequence of the defective execution of the contract, no formal putting in default is necessary. *Ibid.*
9. It is not necessary that the defendant in execution should be made a party to a third opposition claiming the proceeds of a sale made under a *fi. fa.* *Converse v. Hill*, 89.
10. When the name of the State in which plaintiff is domiciled is alone set forth in the petition—*Held*: That it is a sufficient compliance with Art. 172 of the Code of Practice. *Simpson v. Lombas*, 103.

PRACTICE (*Continued*).

- [11. An assignment of errors in the Supreme Court, under Art. 897 of the Code of Practice, is not necessary when the case was decided in the court below on an exception to the sufficiency of the plaintiff's petition.
Hiestand v. New Orleans, 137.
12. The plaintiff is not bound to administer proof of the allegations of his petition which are not denied by the answer. *Ibid.*
13. The general rule is, that the defendant must be sued at the place of his domicile or usual residence, and a suit for freedom has not been made by the lawgiver an exception to this rule. *Logan v. Hickman*, 300.
14. An affidavit for a continuance is insufficient when it does not disclose the name of any witness, by whom it is expected to prove any particular fact or facts, and does not state within what time the party expects to obtain the testimony of his witnesses. *Borren v. Mertens*, 306.
15. In cases where it is admissible to dispense with personal service of a notice, the notice ought in general to be served in the form required for citations and other analogous proceedings. *McDermott v. Cannon*, 313.
16. A surety on a sequestration bond cannot be proceeded against by rule or on motion. *Sharp v. Bright*, 390.
17. The failure on the part of a surety, against whom a rule has been taken, to answer the rule, cannot be construed as a waiver of his right to except to such proceedings. *Ibid.*
18. Where a third opposition has been notified to the Sheriff, only after property has been seized, sold, and the proceeds distributed among the judgment creditors, the third opponent's privilege will not entitle him to be paid out of the proceeds of the sale thus judicially made.
Lyons v. McRae, 423.
19. The judgment of the lower court was not reversed, because the Judge refused to compel experts to report after the expiration of the time appointed for them to report. In a case of this kind, it was a matter of discretion with the Judge whether he would do so, or leave the parties to the benefit of the testimony of the experts before the jury.
Scuddy v. Shaffer, 569.
20. When a supplemental petition is filed, in which a larger amount is claimed than was demanded in the original petition, such amendment is material, and should be served upon the defendant, and regularly put at issue; and when this is not done, it will be presumed that plaintiff has waived or abandoned it.
Clark v. Holbrook, 573.
21. Technical objections to the mode of proceeding in suits, ought to be urged before judgment. *Daily v. Newman*, 580.
22. Where the property has been attached and released on bond, a party claiming the property attached and bonded cannot do so by intervening in the suit between plaintiff and defendant; he must enforce his claim to the property against the person who has possession of it.
Wright v. White, 583.
23. Where a suit on an account was commenced by attachment in this State, and for the same cause of action was at the same time carried on and prosecuted to final judgment in the courts of Mississippi—*Held*: That the

PRACTICE (*Continued*).

- judgment thus obtained in Mississippi could be substituted by way of amendment, as the cause of action in the Louisiana court, in place of the account, so as to maintain the attachment. *Ibid.*
24. When, after issue joined, one of the defendants dies, and the plaintiff delays or neglects to revive the suit against his representatives, the other defendant cannot have the suit dismissed, but is entitled to a separate trial, may compel the plaintiff to try the case as far as he was concerned.
Whitfield v. Bryan, 600.
25. Where by an evident clerical error, a different name from that of the defendant in the suit has been inserted in the prayer of the petition, the suit should not be dismissed, but leave granted to correct the error by an amendment *instantly*.
Hickman v. Boggus, 609.
26. When the defendant sets up in his answer title by authentic act, to the property sued for, the plaintiff is entitled to amend his petition, by putting at issue the validity of such title.
West v. Hickman, 610.
27. Where in a suit to compel the defendant to render an account, an order to file the account has been made, and a judgment by default taken on the petition for want of an answer, the refusal of the defendant to comply with the order, although a good ground for his arrest and punishment, for contempt of the authority of the court, will not deprive the defendant of the right to file his account at any time before the judgment by default is made final.
Ledoux v. Murray, 613.
28. A citation issued and signed by the Parish Recorder in his official capacity, instead of the Clerk, will be fatal to the validity of any judgment which may be rendered against the party on whom it was served.
Anderson v. Joiett, 614.
29. Creditors having individually the right to institute the revocatory action, they may be joined as plaintiffs to the same suit, to have a fraudulent or simulated conveyance made by their common debtor annulled.
Williams v. Hawthorn, 615.
30. In a revocatory action, all persons charged with colluding for the purpose of defrauding the plaintiffs, may be joined as defendants. *Ibid.*
31. When the defendant, in a petitory action, prays for oyer of the title papers under which plaintiff claims, the plaintiff is bound to file them on the day fixed by the order of the court, under the penalty of a dismissal of the suit.
Maillon v. Boyce, 621.
32. An order of survey will not withdraw a case from the consideration of the court during the delay fixed for the return of the survey, as in case of an order of continuance. *Ibid.*
33. The State cannot be sued indirectly by way of a reconventional demand set up in the defendant's answer. *State v. Leckie*, 636.
34. Where a suit is improperly brought against the beneficiary heir as such, for a debt of the succession, and is dismissed on the exception of the heir, leave should be granted to the plaintiff to amend, by making the proper parties.
State v. Leckie, 641.

PRACTICE (*Continued*).

35. When plaintiff propounds interrogatories on facts and articles to defendant, and in his answer he admits only a part of the demand, plaintiff may take a nonsuit, or discontinue the suit as to the residue.

Hale v. Saunders, 643.

36. Plaintiff has the right to discontinue the whole or any portion of his demand, so long as there is no reconventional demand filed by defendant. *Ibid*.

37. An exception of *lis pendens* made after a plea of *res judicata* has been overruled, and before a judgment by default has been rendered, should be considered as having been made in *limine litis*, and if well taken should be sustained.

Byrne v. Prather, 653.

38. Objections to the authority of the plaintiff to sue, and to the non-joinder of the heirs and representatives of one who was bound jointly with the defendant, cannot be made after an answer has been filed, pleading a general denial.

Dyer v. Drew, 657.

39. When interrogatories on facts and articles are annexed to a petition, and an exception is made to the vagueness of the petition, and sustained with leave to amend—*Held*: That the interrogatories not being pertinent to the issue, the defendant should not be compelled to answer them.

Picket v. Vance, 668.

40. When there is a prayer in the petition for general relief, and the partnership sued is alleged to be a commercial one, a judgment rendered against the parties *in solido*, will not be disturbed on the ground that a joint judgment was claimed in the petition.

Taylor v. Hancock, 693.

41. When an interlocutory order is made, that a motion to dissolve an injunction should stand as part of the answer, it cannot cause an irreparable injury, and consequently cannot be appealed from—*Held*: That when the motion puts at issue the truth of the allegations of the petition for injunction, it is proper that such an order should be made.

Denson v. Stewart, 703.

42. Where a suit was instituted on the obligation of a married woman, and after the joinder of issue a peremptory exception was filed to the petition, on the ground that it was not alleged that the defendant was separate in property from her husband, or that the obligation enured to her separate benefit—*Held*: That the exception was properly sustained.

Robson v. Shelton, 712.

43. When the record shows that the defendant appeared and defended the suit, by filing a peremptory exception, and taking bills of exception to the introduction of evidence, he cannot claim a reversal of the judgment rendered against him, on the ground that the record does not show that the issue was joined by a judgment by default.

State v. Hampton, 725.

44. When the minutes of the court and the judgment show that the sureties on an appearance bond were regularly called to produce the body of their principal, previous to a judgment of forfeiture, it cannot be objected that there is no evidence of the fact.

State v. Fuller, 726.

45. The entry on the minutes is in the nature of a citation, and need not be offered in evidence.

Ibid.

PRACTICE (Continued).

46. An opposition to the report of auditors must specially mention the items of credit objected to. *King v. Wartelle*, 740.

47. A motion made to order the plaintiff to make a choice of his cause of action, and declare whether he sues on a contract, or a *quantum meruit*, is in its nature dilatory and can only be made *in limine litis*.
Gribble v. McKleroy, 793.

48. District Courts cannot dissolve attachments issued by Justices of the Peace, except on appeal. *Shiff v. Carprette*, 801.

49. When a party has a claim exceeding in amount the jurisdiction of a Justice of the Peace, and bearing a privilege upon property attached by another party in a Justice's Court, his remedy is by a suit in the District Court, claiming his privilege and enjoining the officer having the writ of attachment issued by the Justice from proceeding with its execution, and paying over the proceeds to the attaching creditor; or by a rule taken upon the attaching creditor, to show cause why he should not be paid by preference out of the proceeds of the sale of the property attached. *Ibid.*

50. A bill of exceptions to the refusal of the Judge to grant a trial by jury, cannot be noticed when it contains neither the reasons of the Judge for his refusal, nor the grounds on which the ruling was excepted to.
Davis v. Millaudon, 808.

51. When on the trial a party is taken by surprise, by the introduction of evidence legally admissible, to establish facts not disclosed by the pleadings, he has a right to a continuance on a proper showing. *Ibid.*

52. Where several parties claim a sum of money, to which the party in possession of the money does not assert any right, the court may order the money to be deposited in the hands of the Clerk of the court, until the respective rights of all the claimants are adjudicated upon.
Succession of Thompson, 810.

53. Where an exception is filed with an answer to the merits, what is admitted by the exception for the purpose of testing the plaintiff's petition, may be denied by the answer, and if the exception be overruled, final judgment can only be rendered after a regular trial on the merits.
State v. Crescent M. Ins. Co., 825.

54. Where an exception to the petition in an action of jactitation, on the ground that the plaintiff was not in possession of the land, filed *in limine litis*, had been dismissed by the court, previously to the empanneling of the jury—*Held*: That the question of possession was not before the jury for decision.
Arrowsmith v. Durell, 849.

55. When the plaintiff goes to trial without making the objection that issue is not joined on a reconventional demand, he cannot make objection afterwards, supposing even it is necessary to join issue upon a demand in reconvention. *Ibid.*

56. Where a defendant pleads title in general terms, and the plaintiff does not require that the title should be set forth more specifically, nor crave oyer of the defendant's titles before going to trial, evidence of a specific title offered by the defendant cannot be objected to. *Ibid.*

PRACTICE (*Continued*).

57. A reconventional demand, although filed at the same time with the answer, and in the same paper, is not a part of the answer.
Powell v. Graves, 860.
58. The Article 2700 of the Civil Code, declaring that judicial admissions cannot be divided, does not apply to admissions in pleadings. *Ibid.*
59. Where the defendant has set up a reconventional demand and neglects to prosecute it, he cannot allege as error that the judgment of the court below did not pass upon his demand. *Ibid.*
60. Under the prayer for general relief in an opposition to an executor's account, and upon proof received without objection, the court may reject the executor's charge for commissions, although the opposition itself does not present such an issue. *Succession of Hughes*, 863.
61. Where a defendant is sued as silent partner in a commercial firm, service of citation on the clerk of the firm is not sufficient. *Ridge v. Alter*, 866.
62. Where there is no proof of the authorization of an attorney to defend a suit, and such authorization is denied on oath by the defendant who was not legally cited, a judgment against the defendant will be annulled. *Ibid.*

See WITNESS—*Roquet v. Boutin*, 44.

See APPEAL—*White v. Cazenave*, 57.

See GARNISHMENT—*Frellaen v. Anderson*, 65.

Low v. Proctor, 373.

Rose v. Whaley, 374.

See ATTACHMENT—*Story v. Jones*, 73.

See MINORS—*Hauley v. Crozier*, 304.

See EXECUTORS AND ADMINISTRATORS—*Lockhart v. Wall*, 273.

Lobit v. Castille, 779

See EXECUTION—*Soule v. Pollard*, 287.

See SUCCESSIONS—*Surgi v. Calder*, 336.

See INTERROGATORIES—*McKnight v. Connell*, 396.

See CONTRACTS—*Dubois v. Aiques*, 427.

See WILLS—*Deslondes v. New Orleans*, 552.

See MORTGAGE—*Saloy v. Cheznaiidre*, 567.

See TUTORS, &c.—*Caillateau v. Ingouf*, 623.

See SUCCESSIONS—*Ford v. Newcomer*, 706.

See SALE—*McDonald v. Vaughan*, 716.

Davis v. Millaudon, 868.

See BILLS AND NOTES—*Collins v. McDonald*, 735.

See HUSBAND AND WIFE—*Favaron v. Rideau*, 805.

See INJUNCTION—*Knabe v. Fernel*, 847.

See CONTRACTS—*Brown v. Bark Laura Snow*, 848.

See TAXES, &c.—*New Orleans v. Fisk*, 862.

See BILLS AND NOTES AND PARTNERSHIP—*Kearney v. Fenner*, 870.

PRESCRIPTION.

1. A defendant pleading prescription may be interrogated, as to any acknowledgements or promises he may have made, before prescription has been acquired.
Saunders v. Carroll, 27.
2. The Act of 1858, which provides that parol evidence shall not be admitted to prove a promise to pay any written obligation when prescription has already run, but that in all such cases the promise to pay shall be proven

PRESCRIPTION (*Continued*).

by written evidence, is an Act affecting the remedy, and must be held to apply only to the proof of promises made subsequent to its passage.

Ibid.

3. The action of a judgment creditor of the husband to annul a judgment of the wife against the husband, on the ground of fraud, is prescribed by the lapse of one year from the date of the wife's judgment, she having a real demand. *Van Wickle v. Garrett*, 106.
4. The reinscription of a judgment interrupts prescription against the hypothecary action on the judgment. *Ibid.*
5. The prescription of sixty days against ships and vessels, has reference to the time of asserting the privilege by suit. The right of privilege is fixed by the judgment. *Hunter v. Bell*, 142.
6. Where a suit is brought against the surety who is bound *in solido* with the drawer of the draft for its payment, prescription is thereby interrupted as to the principal debtor; it will commence to run again from the date of the judgment against the surety. *Richard v. Butman*, 144.
7. Where the plaintiff has resided out of the State, he is entitled to the benefit of the double term of prescription up to the date of the promulgation of the Act of the Legislature in 1848, placing residents and non-residents on the same footing as to prescription. *Timmons v. White*, 151.
8. A credit endorsed on a bond at a time not suspicious by an officer of the bank in the regular discharge of his duty, is sufficient evidence of the payment to interrupt prescription. *Union Bank v. Bradford*, 159.
9. The law of the forum governs in matters of prescription. *Walworth v. Routh*, 205.
10. The statutes of limitations of the other States are engrafted upon our law as to judgments only when two conditions concur: 1st, where the judgment has been rendered between persons who reside out of the State, and to be paid out of the State. 2dly, where the defendant removes to the State of Louisiana, after he has become entitled to the benefit of the statute of limitations of the place where the judgment was rendered. *Ibid.*
11. The prescription of one year is inapplicable to an action for the price of wines sold in casks and boxes by a wholesale dealer. *Carrière v. Labiche*, 211.
12. Prescription against an action for the recovery of money collected by a Sheriff under a writ of *fi. fa.*, will only commence to run from the date of the demand by the judgment creditor, and non-payment by the Sheriff. *Fuqua v. Young*, 216.
13. Those who possess not for themselves, but in the name of another, cannot change the nature of their tenure so as to acquire the legal possession which is the basis of a title by prescription. *Jackson v. Jones*, 230.
14. An action for the recovery of money loaned is prescribed by three years. *Bringier v. Gordon*, 274.

PRESCRIPTION (*Continued*).

15. Whenever it becomes necessary to institute a separate and distinct action, from the one in which the judgment was rendered, the prescription of ten years under Art. 3508 of the Civil Code is applicable to such action.
Kemp v. Cornelius, 301.
16. The prescription of one year does not bar an action *en declaration de simulation*.
Edwards v. Ballard, 362.
17. Good faith is essential to the acquisition of property by the prescriptions of five and ten years.
Ibid.
18. Prescription will bar an action, unless a case of inability to sue be fully made out.
Dugan v. Fulton, 418.
19. The action for delivery of merchandise, or other effects, shipped on board any kind of vessel, is prescribed by one year.
Pitkin v. Rousseau, 511.
20. The prescription begins to run from the day of the arrival of the vessel, or that on which she ought to have arrived.
Ibid.
21. The party pleading this prescription should show that the vessel either did, or ought to have arrived one year before the suit was brought—an omission to do which is fatal to his plea.
Ibid.
22. Art. 3212 C. C. fixing the time at which a ship is considered to have made a voyage, refers alone to the privileges, given by the Articles which precede it, to creditors upon a ship, and does not govern the time when a shipper may bring an ordinary action (asking no privilege) for the delivery of goods.
Ibid.
23. The death or insolvency of one debtor *in solido* does not release or extinguish the right of *solidarity* which the creditor has against the others; and the acknowledgment of a debt, by placing it on a tableau of distribution made by the syndic of the debtor *in solido*, who is insolvent, interrupts prescription as to the other debtors bound *in solido* with him.
Morgan v. Métaier, 612.
24. The written acknowledgment of an account places the claim on the footing of an ordinary personal debt, and subjects it to the prescription of ten years, as provided by Article 3508 C. C.
Byrne v. Prather, 653.
25. When a receipt has been given by an attorney-at-law, for a claim placed in his hands for collection, the prescription of one year, provided by Art. 3501 of the Civil Code, cannot be applied where an action is brought on the receipt to make him liable for having allowed the debt to be lost by his neglect; the receipt creates a personal obligation which is only prescribed by ten years, as provided by Article 3508 C. C.
Dyer v. Drew, 657.
26. The claim of a surety against his principal, for reimbursement of the amount of a note taken up by the surety, is barred by the prescription of ten years only.
Smith v. Taylor, 663.
27. Where there has not been an active abandonment of a suit by the plaintiffs, prescription is interrupted, notwithstanding there be a judgment of non-suit.
Sheldon v. Reynolds, 692.

PRESCRIPTION (*Continued*).

28. Prescription does not run on a merchant's account for advances made in the shape of acceptances of drafts, and disbursements for necessary supplies, insurances, freight, &c., upon each separate item of the account, but the account as a whole is prescribed in three years.

Andrew v. Keenan, 705.

29. In regard to an account for goods sold, by the terms of the law, each item of the account is subject to its own prescription. *Ibid.*

30. The insufficiency or want of advertisement in a Sheriff's sale is an informality within the purview of the Act of 1834 (reënacted in 1855), and under that Act is prescribed against after the lapse of five years from the date of the sale.

Louaillier v. Castille, 777.

31. The possession of slaves under a contract of hire by the husband in his lifetime cannot be made the basis of a prescriptive title in the wife, who continued in possession of the slaves after her husband's death, and claimed to be the owner of them.

Calmes v. Duplantier, 814.

32. A purchaser who is aware of the defects of the title of his vendor, cannot claim the benefit of the prescription of ten years. *Ibid.*

See SALE, JUDICIAL—*Dutillet v. Blanchard*, 97.

Robert v. Brown, 597.

See LEVEES AND ROADS—*Inge v. Police Jury*, 117.

See REDIRECTION—*Comaue v. Doiron*, 184.

See NOVATION—*Taylor v. Simon*, 351.

See CONTRACTS—*Nimmo v. Walker*, 581.

See EXECUTORS AND ADMINISTRATORS—*Succession of McAlpin*, 617.

See INSOLVENCY, &c.—*Walling v. His Creditors*, 670.

See PARTNERSHIP—*King v. Wartelle*, 740.

See TAXES, &c.—*New Orleans v. Locke*, 854.

See CORPORATIONS—*C. & P. H. R. Co. v. Eason*, 816.

PRINCIPAL AND AGENT.

1. A mandate is gratuitous, unless there has been a contrary stipulation.

Succession of Rice, 317.

2. Where a party permits a broker to act as principal, in effecting a compromise with his debtor, on a promissory note, and is notified of the broker's act, without repudiating his authority at once, he is bound by the compromise entered into between the debtor and broker.

Barrière v. Peychaud, 370.

3. The agent is a competent witness to prove acts done within the scope of his authority; his liability for damages for falsely representing himself as agent, is an objection to his credibility. *Ibid.*

4. Where a broker or agent sells a note, with a forged endorsement upon it, without disclosing the fact of his agency, or the name of his principal, he is responsible for the amount, with legal interest, which was paid for the note.

Parlange v. Faurès, 444.

See PARTNERSHIP—*Hallet v. Desban*, 629.

See DONATION—*Giannoni v. Gunny*, 632.

See PRESCRIPTION—*Smith v. Taylor*, 663.

See BILLS AND NOTES—*Cummings v. Harzabruch*, 711.

PRINCIPAL AND SURETY.

1. The receipt by the creditor of a check on the bank for the balance due him, it being understood that the drawer of the check had then no money in the bank, but would deposit money within two or three days to meet it, is not a giving of time to the debtor which will discharge his surety.
Bordelon v. Weymouth, 93.
2. A general and indefinite suretyship extends to all the accessories of the principal obligation and even to the costs of suit. C. C. 3009.
Scully v. Hawkins, 183.
3. The obligation of the surety on an administrator's bond can be enforced at once without proceedings against the estate of the principal, which is shown to be insolvent by a tableau of distribution filed in the due course of administration.
Succession of Lynch, 235.
4. The surety of the liquidator appointed to administer the affairs of a commercial partnership which has been dissolved by the death of one of the partners, cannot file an account in the succession of such deceased partner, of the administration of his principal, with the view of obtaining his discharge from liability as surety.
Succession of Twibill, 645.
5. Where the tutor was bound to furnish another surety, in the place of one who had died or become insolvent, and without any order of court, voluntarily furnished a new bond, with other surety, which was filed and approved by the Clerk of the court—*Held*: That the surety on the new bond was bound, although it was not executed in pursuance of any order of court "*volenti non fit injuria*."
Elam v. Barr, 671.
6. The stipulation by a surety on a promissory note, that the holder shall exhaust all the legal remedies against the drawer of the note, before having recourse upon such surety, amounts to a simple reservation of the right of discussion, and has no other effect. So that where it is shown that the drawer is and has been for a considerable time insolvent; that he has left the State without leaving any property, and that it is impossible, from the circumstances of the case, that the plaintiffs could make anything by proceeding against such drawer, an action by the holder against the surety will lie immediately.
Sheldon v. Reynolds, 692.

See ATTACHMENT—*Emanuel v. Mann*, 53.

See APPEAL—*Wood v. Harrell*, 61.

See EXECUTORS AND ADMINISTRATORS—*Goode v. Buford*, 102.

See PRESCRIPTION—*Richard v. Butman*, 144.

See JUDGMENT—*Love v. McComas*, 201.

See TUTORS, &c.—*Brown v. Robert*, 259.

Fuselier v. Babineau, 764.

See TAXES &c.—*State v. Hampton*, 679.

" " 725.

See PRACTICE—*State v. Fuller*, 726.

See BONDS—*State v. Badon*, 783.

PRIVILEGES.

1. A creditor whose debt has been secured by a conveyance of property to a trustee, with authority to sell, and pay the debt, cannot claim such property as owner; and when attached, cannot set aside the attachment, upon giving bond, and take possession of it during the pendency of the litigation.
Hughes v. Klingender, 52.

PRIVILEGES (*Continued*).

2. Such a conveyance would only give him the right to enforce the execution of the trust, and make him a creditor with a privilege. *Ibid.*
3. The privilege granted to the vendor by the Article 3194 C. P. is not conditional, or dependent upon the solvency or insolvency of the buyer; it is positive, without condition or limitation, as long as the property sold remains in the possession of the purchaser. *Converse v. Hill*, 89.
4. The recording of the *proces verbal* of adjudication of work to be done on the road and levee, without giving the name of the proprietor or a description of the land, will not create a privilege on the land on which such work is done. *Police Jury v. Crosely*, 164.
5. When there has been no contract of letting and hiring of slaves, a privilege on the crop raised by them cannot be asserted. *Bisland v. Provosty*, 169.
6. A draft taken in part payment of the price of property sold, does not novate the debt so as to cause the seller to lose his privilege upon the property sold. *Succession of Kercheval*, 457.
7. When a shipper has shipped goods to his factor in the usual course of business, and has sent forward with the shipment, or by mail, one of the bills of lading consigning the goods to him, the shipper cannot destroy the lien and privilege that the factor and consignee will have for advances upon the goods, by transferring other bills of lading to secure other debts. *Funkhouser v. Dutcher*, 494.
8. Where cotton, consigned to a commercial house, had been sunk and damaged, and reshipped, the party reshipping paying the freight and charges for salvage, and consigning it to another house, who paid the charges for freight and salvage, the original consignees refusing to pay them, on the ground that they were exorbitant—*Held*: That where there is no evidence of any bad faith on the part of the second consignees, or of a combination to commit extortion by the shippers, the consignees were justifiable in paying the charges, and that the payment of such charges should be considered as advances, for which a privilege is given by Art. 3214 of the Civil Code and the statute of 1841. *Buchanon v. Switzer*, 495.

See PRESCRIPTION—*Hunter v. Bell*, 142.

See INSOLVENCY—*Tenny v. Provosty*, 221.

McRae v. His Creditors, 229.

See PRACTICE—*Lyons v. McRae*, 423.

PROHIBITION.

1. The writ of prohibition is only issued to a court which takes cognizance of a cause that does not belong to it, or which it is incompetent to decide. *State v. Judge*, 504.
2. The writ should not be issued to a court which grants an order of sequestration, only as a conservatory measure to insure the jurisdiction of another court in which the action is to be instituted. *Ibid.*
3. To maintain an application for a writ of prohibition there must be a clear usurpation of jurisdiction. *Ibid.*

PUBLIC LANDS.

1. The decisions of the Register and Receiver of the Land Office, and other federal tribunals, on questions involving the conflict of titles emanating from the federal government, are not subject to the revision of State Courts. *Ford v. Morancy*, 77.
2. The courts can look behind a patent, but not in all cases; and the general rule, that nothing perfects the title to public lands, but a patent, is not without exceptions; it has been held, that where an equitable right originated before the date of the patent, whether by the first entry or otherwise, and was asserted, such right might be examined into. *Ibid.*
3. It cannot be objected to the confirmation of a land claim by Act of Congress, that the Commissioner exceeded his powers by inquiring into and reporting upon a claim not embraced in the instructions of Congress, when it appears that Congress, notwithstanding, accepted the report and confirmed the claim. *Dutillet v. Blanchard*, 97.
4. A party who has made an entry of public land under a preëmption law, and obtained the Receiver's receipt for the purchase money, has obtained an equitable right which cannot be defeated by a patent obtained through fraud and misrepresentation. *Knox v. Pulliam*, 123.
5. Where the Commissioner of the Land Office was induced by misrepresentation to cancel an entry so made and to order the land to be entered as school land, under a warrant presented by another party—*Held*: That the patent issued under the last entry enured to the benefit of the party making the first entry as the equitable owner of the land. *Ibid.*
6. A Register of the State Land Office has no authority to review and reverse a decision of his predecessor. *Franklin v. Woodland*, 188.
7. Under the Preëmption Act of the Legislature of Louisiana of 1853, it was essential, to constitute a right of preëmption, that the land claimed should embrace the settlement or improvements of the preëmptor. *Sage v. Cain*, 192.
8. A preëmption right on a tract of land cannot be transferred until it be paid for, and a receipt obtained from the Receiver. *Moore v. Jourdan*, 414.
9. A preëmptor under the Act of Congress approved March, 1851, entitled "An Act for the settlement of certain classes of land claims within the limits of the Baron de Bastrop Grant, and for allowing preëmptions to certain actual settlers, in the event of the final adjudication of the title of the said *De Bastrop* in favor of the United States," may either sell or mortgage the land after its purchase from the General Government, as in ordinary cases, there being in the Act no restriction of his right to do so. *Richardson v. Emswiler*, 658.
10. The title of a party to land purchased from the Government, and for which he has obtained a patent, cannot be defeated by any other claimant, unless he show an equitable or legal title in himself which existed prior to the issuance of the patent, and which could not be defeated by the subsequent action of the Land Department. *Leblanc v. Ludrique*, 772.
11. In a contest of title between such parties, the application to enter, with the accompanying proof of occupancy and cultivation, are admissible in evidence as the muniments of title which form the basis of an equitable right, prior to the issuance of the patent. *Ibid.*

PUBLIC LANDS (*Continued*).

12. An endorsement of the Register of the Land Office on the application to enter, to the effect that the applicant, through a duly authorized agent, had tendered payment, and was refused in consequence of the land claimed having been erroneously sold to another, is only proof of the fact that a tender of payment had been made; the Receiver had no authority to certify as to the agency, nor could he make a binding entry as to the invalidity of the previous sale. *Ibid.*
13. The Acts of 1852 and 1855 confer upon the Register of the State Land Office jurisdiction in cases only where conflicting claims arise between parties as to their rights to preëmption; but where one of the parties claims a preëmption right, and the other sets up title to the land by virtue of a patent issued by the State, the District Court has original jurisdiction. *Mast v. Hamilton*, 774.
14. A party who has acquired a preëmption right to swamp land donated to the State by the General Government, may maintain a real action against one to whom a patent has been issued by the State, to annul such patent, when the party bringing the action shows that he has not been able to perfect his title by making payment, because the land had not been conveyed by the General Government to the State, after which time payment could alone be required of him. *Ibid.*
15. When the preëmtor in such a case had complied with the provisions of the Act of 1855, by making application and proof of settlement within six months after the promulgation of the Act; and before the lands selected, upon which he had settled, had been approved and returned to the Land Office of this State, a patent had been issued to another person, over the protest of the preëmtor—*Held*: That the patent issued was null and of no effect. *Ibid.*

See EVIDENCE—*Franklin v. Woodland*, 188.

See HUSBAND AND WIFE—*Beauvais v. Wall*, 199.

See ESTOPPEL—*Hulse v. Dorsey*, 302.

RAILROADS.

See NEW ORLEANS—*Brown v. Duplessis*, 842.

REDHIBITION.

1. Neither a rescission of the sale nor a reduction of the price can be claimed by the purchaser of a slave affected with a redhibitory disease, if he neglects to procure the medical assistance which the situation of the slave requires, until long after the sale. *Roquest v. Boutin*, 44.
2. In a redhibitory action, the plea of prescription will be maintained if the term for bringing the suit has elapsed, although a demand is made in the petition that a note given as part of the price should be cancelled and annulled. *Comaux v. Doiron*, 184.
3. A disease making its appearance within fifteen days after the sale, is presumed to have existed on the day of sale, the slave not having been in the State eight months. *Dohan v. Wilson*, 353.
4. It is incumbent on defendant to rebut this presumption. *Ibid.*

REDHIBITION (*Continued*).

5. In a redhibitory action for disease in a slave, it is necessary that there be an allegation and proof of a tender in order to recover; and that such tender should be made, if practicable, before the institution of the suit.
Lewis v. Morgan, 401.
6. There are two exceptions to this rule. First, when an actual tender is not possible; and second, when defendant has done some act, or made some declaration which demonstrates that a formal offer to return the thing sold would have been fruitless.
Ibid.
7. It is not a sufficient excuse for want of tender, that it was impracticable at the time of instituting the suit, if it was practicable at any time between the discovery of the vice and the institution of the suit, or even before the trial.
Ibid.
8. Where in a redhibitory action, brought to rescind the sale of a slave, and recover back the price paid, it was established by parol evidence received without objection, that upon being informed of the sickness of the slave, the vendor had consented to his return—*Held*: That effect must be given to the evidence, and that after its reception, it is too late to raise the objection, that the fact of such consent on the part of the vendor should have been established by written proof, in order to rescind the sale.
Gaiennie v. Freret, 488.
9. Where the consent of the vendor to take back the slave has been given, and in accordance with it, the slave has been returned to him by the vendee—*Held*: That in a suit brought to rescind the sale, and recover back the price paid for the slave, the consent of the vendor throws the burden of proof upon him, and he cannot be relieved from it, without showing fraud or concealment on the part of the vendee in procuring such consent, or some negligence in returning the slave.
Ibid.
10. The exclusion of warranty in an act of sale, cannot avail the vendor, when it is fraudulently made, as he is bound to disclose redhibitory vices and defects in the thing sold, when he knows of their existence; and the vendee is not precluded by such exclusion, from showing that previous to the date of the sale, the vendor was aware of the existence of redhibitory defects, which he fraudulently concealed from him.
Faulk v. Hough, 659.
11. If a slave sold, dies of a disease which did not exist at the time of the sale, but was produced by the effects of a disease which manifested itself within three days after the sale, the vendor is liable.
Deloach v. Elder, 662.
12. Among the apparent defects which do not, under the Civil Code, give rise to the action of redhibition, must be classed the mental weakness of a slave approaching imbecility.
McLean v. Fulford, 711.

REGISTRY.

See PRESCRIPTION—*Van Wickle v. Garret*, 106.

See PRIVILEGE—*Police Jury v. Croxely*, 164.

See POSSESSION—*Pierce v. Blunt*, 345.

Moore v. Jourdan, 414.

See SALE—*Dyke v. Dyer*, 701.

Swan v. Moore, 833.

RES JUDICATA.

1. A judgment in an action of boundary cannot form *res adjudicata* as to the right of property. *White v. Purnell*, 232.
2. The plea of *res judicata* is without force, unless the object demanded in the former suit was precisely the same as that demanded in the action pending. *Edwards v. Ballard*, 362.
3. A judgment of dismissal is nothing more than one of nonsuit, and cannot support the plea of *res judicata*, as to any of the matters at issue. *Fisk v. Parker*, 491.
4. The reasoning and opinion of the court upon a subject, on the evidence adduced before it, cannot have the force and effect of the thing adjudged, unless the subject-matter be definitively disposed of by the decree. *Ibid.*
5. In a petitory action, the defendant is bound to plead all the titles under which he claims to be owner, and a final judgment rendered in favor of the plaintiff may be pleaded as *res judicata* against any title which the defendant was possessed of at the time, but omitted to plead. *Shaffer v. Scuddy*, 575.
6. A judgment which has been appealed from cannot be pleaded as *res judicata* while the suit in which it was rendered is pending on appeal. *Byrne v. Prather*, 653.

SALE.

1. A sale made at auction by the Comptroller, and afterwards clothed with the formalities of an authentic act, cannot be annulled on the ground that the adjudication was made by a person who was not regularly licensed as an auctioneer. *Schwartz v. Flatboats*, 243.
2. Where it is stipulated, in an act of sale, that the note given for the price shall remain deposited with the Parish Recorder, until a certificate of non-mortgage is furnished, its possession by the plaintiff is *prima facie* evidence that it was delivered to him by the depositary after a certificate furnished. *Weems v. Ventress*, 267.
3. If the plaintiff came into possession of the note improperly, the defendant's remedy would have been by injunction, not by an appeal from the order of seizure and sale. *Ibid.*
4. When the price of property is made payable in installments, the vendor may sue for rescission of the sale at once, upon the failure of the vendee to pay the first installment. *Thompson v. Kilcrease*, 340.
5. The original vendor seeking to rescind the sale, is only compelled to reimburse the value of improvements made by a possessor in good faith. Improvements made after the institution of the suit to rescind the sale must be considered as made by the possessor in bad faith. *Ibid.*
6. Where the buyer refuses to accept goods, the seller is not obliged to let them perish on his hands, and run the risk of the solvency of the buyer. *Judd Oil Co. v. Kearney*, 352.
7. Where the vendor, however, buys the goods offered for sale, or any part thereof, either directly or indirectly, or where, by an arrangement made

SALE (*Continued*).

by him or his agents, competition at the sale of the goods is prevented, he thereby forfeits his right to recover the deficiency in the amount of the sales. *Ibid.*

8. A boat which has been sold is liable to seizure at the suit of the vendor's creditors, as long as it remains in the possession of the vendor.
Zacharie v. Kirk, 433.
9. Where a debtor has resorted to a simulated sale, for the purpose of defrauding creditors, it is not necessary that a judgment creditor should proceed by the revocatory action, in order to have the sale annulled; he is entitled to consider the sale as without reality and to seize the property thus sold as that of the vendor.
Scully v. Kearns, 436.
10. The right of a party purchasing real estate, in good faith, and for a sound price, from one in whom the legal title is vested, as shown by the records of the country, cannot be impaired or affected by a previous simulated sale.
Delacroix v. Lacaze, 519.
11. Where it appeared that a sale was made for cash, but it is shown that no money was paid, and it was understood between the parties that the property was conveyed in trust to the apparent vendee, he assuming to pay the debts due on the property, and it was agreed that when these debts were paid the property was to be reconveyed—*Held*: That such a sale was a mere simulation, and that creditors of the vendor seizing such property under execution, have a right to maintain the seizures by showing the simulation.
Gleisses v. McHatton, 560.
12. *Held*, also, that where there is a delivery of the property under such a contract, it is a contract of pledge, and the party in whose favor it is made has no right to enjoin the sale of the property under execution, but should proceed by way of third opposition to claim a priority of privilege upon the proceeds of the sale. *Ibid.*
13. The surviving widow of *R. W.* sold a tract of land belonging to the community, of which property her minor children owned an undivided half. The sale was made by the mother for herself, and as tutrix of her minor children, and with full warranty. In a suit by one of the children to recover his portion of the property from one holding under a title from his mother's vendee—*Held*: That although the defendant had not obtained a subrogation to his vendor's right of warranty against the mother of plaintiff, the action could not be maintained, the fact of the price of the property having gone into the succession of the mother, of which the plaintiff was heir, making it against good conscience for him to recover.
Winn v. Brown, 642.
14. Article 2417 of the Civil Code, which provides that a sale of immovables or slaves by act under private signature, has effect against creditors only from the day of its registry, and the actual delivery of the thing sold, controls Article 2242, which declares such sales to be valid from the date of their registry or from the time of the actual delivery of the thing sold.
Dyke v. Dyer, 701.
15. Property cannot be seized by a judgment creditor of the vendor, when the private act has been recorded previous to the issuance of execution. *Ibid.*

SALE (*Continued*).

16. If the property remains in the hands of the vendor, the legal consequence resulting therefrom would be a presumption of simulation, which it is incumbent on the vendee to rebut. *Ibid.*
17. After the purchaser has been put *in mora* for the non-payment of the price, his offer to execute his engagement comes too late.
Morrison v. Wimberly, 713.
18. But where there is no danger that the seller may lose the price and the thing itself, in an action of rescission, the Judge may grant to the buyer a longer or shorter time, according to circumstances, provided such time does not exceed six months. *Ibid.*
19. Before the institution of an action for the rescission of a sale, the party seeking relief must offer to place his adversary in the same situation that he was before the act of sale was passed.
McDonold v. Vaughan, 716.
20. The plaintiff, in an action for rescission, must establish the loss of the whole or part of the thing sold; the loss must be certain—it will not suffice if it appears probable. *Ibid.*
21. The loss will be considered as certain, if a perfect outstanding title in a third person is shown to exist. *Ibid.*
22. A statement of the Commissioner of the General Land Office in a letter, to the effect that he has canceled a certificate, does not amount to an eviction which should rescind a sale between third persons. *Ibid.*
23. When in an action for the rescission of a sale, it appears that the plaintiff has not suffered any actual disturbance, but it is shown that he is in danger of being disturbed in his possession—*Held*: That under the prayer for general relief, the court may order the defendant to give security as provided in such cases, by Art. 2535 of the Civil Code. *Ibid.*
24. The heir who purchased at the sale of the succession, has a right to withhold the price, until his share in such succession is ascertained by settlement and partition.
Dyson v. Phelps, 722.
25. The purchaser of property in good faith from one who is not the owner, is only liable for the fruits from judicial demand. *Ibid.*
26. On eviction, the buyer can only recover from the seller such increased value of the thing since the sale, as the parties had in contemplation at the time of the sale. *Ibid.*
27. The want of belief on the part of one who has been informed of the existence of an unrecorded title to property, does not impair the effect of the notice thus received.
Susan v. Moore, 833.
28. Creditors are as much bound by the actual knowledge of a prior unrecorded title as subsequent purchasers are, the law having made no distinction between them as to the effect of notice or knowledge derived from the registry of an act of sale or mortgage. *Ibid.*
29. Actual knowledge of an *unrecorded title* on the part of a creditor is equivalent to *knowledge* or *notice* resulting from the registry of such a title. *Ibid.*

SALE (*Continued*).

30. A *vente à réméré*, like any other sale, is perfected as to third persons, in the case of movables, by delivery, and the vendee becomes the owner of the fruits and the property absolutely, if it be not redeemed at the time stipulated.
Hughes v. Klingender, 845.
31. An order of seizure and sale may be enjoined on the ground of a deficiency in the quantity of land sold, which would entitle the vendee to a diminution of the price.
Davis v. Millaudon, 868.
32. A tender by the vendor of other lands to supply the deficiency in the quantity of land sold, is an admission of the deficiency, and such admission is not avoided by the declaration in the plea of tender, that the party does not thereby waive the benefit of his plea of the general issues.
Ibid.
33. A claim in *diminution of price* is not a demand in compensation or set off, in the legal sense of the term, and may be set up as a ground of defence by the vendee when sued for the price, without his being obliged to resort to a separate action.
Ibid.
34. The maxim of law "*qua temporalia, &c.*" has survived the general repealing Act of 1828, and although the action *quantum minoris* be prescribed, the vendee, when sued for the price, may resist the payment on the ground of a claim to a diminution of the price.
Ibid.

See REDIMPTION—*Roquest v. Boutin*, 44.See EVIDENCE—*Beauvais v. Wall*, 199.See WARRANTY—*Underwood v. Lacapère*, 276.See ESTOPPAL—*Hulse v. Dorsey*, 302.See CONTRACTS—*Sainet v. Duchamp*, 539.*Satterfield v. Keller*, 606.See HUSBAND AND WIFE—*Parnell v. Petrovic*, 601.*Johnston v. Pike*, 731.See PRESCRIPTION—*Calmes v. Duplantier*, 814.

SALE, JUDICIAL.

1. Where the purchaser of property at a succession sale had gone into possession of the property and complied with the terms of the sale, by making a cash payment and furnishing his notes for the balance of the price—*Held*: That the administrator could not sue to rescind the sale, on the ground of defects in the title of the purchaser.
McCulloch v. Weaver, 33.
2. When the proceeding was *in rem* under the Act of the Legislature of 1829, relative to proceedings against lands for works done upon the roads and levees of the same—*Held*: That the Act only requires notice to be given "to any person whom it may concern," and that when there has been a sufficient description of the land in the advertisements, and the proprietor by the use of due diligence might have protected himself, the sale will not be annulled on the ground that the property was described as belonging to others than the real owner.
Dutillet v. Blanchard, 97.
3. The prescription of five years, under the Act of the Legislature of 1834, would cure such an irregularity in the description of the property.
Ibid.

SALE, JUDICIAL (*Continued*).

4. A Sheriff's sale, not recorded in the Recorder's office of the parish where the property is situated, is utterly null and void, except between the parties thereto.
Raiford v. Wood, 116.
5. Where the seizing creditor becomes the purchaser of property at Sheriff's sale, retaining in his hands part of the price to pay a prior special mortgage on the property, which mortgage was afterwards discharged by the debtor himself—*Held*: That the seizing creditor, having a privilege on the proceeds of the sale, had a right to apply the amount thus remaining in his hands, to the unsatisfied balance of his own debt.
Yeatman v. Erwin, 149.
6. The purchaser, who is allowed to retain in his hands the amount of prior special mortgages, as a part of the price, is bound for the interest accumulated on such mortgage debts after the sale.
Ibid.
7. In a sale under execution, when all the installments of a debt are not yet due, an appraisalment of the property is nevertheless essential.
Foree v. McIntyre, 158.
8. Where the amount of the matured installments is less than the price for which the property is adjudicated, the surplus of the price only becomes exigible at the maturity of the other installments, adding interest to such surplus, so as to correspond with the term of credit allowed.
Ibid.
9. The Civil Code of 1825, does not contain the provisions of the old Code on the subject of licitation.
Hache v. Ayraud, 178.
10. The sale to effect a partition under a decree of court, must be made to the highest bidder at public auction. It is a judicial sale which, under Article 1863 of the Civil Code, cannot be invalidated on account of lesion.
Ibid.
11. Lesion will not invalidate a judicial sale to effect a partition even when the purchaser is one of the heirs of the estate to be divided.
Ibid.
12. Article 1440 of the Code, which says, that *acts of sale* which tend to the division of property between co-heirs, are subject to rescission for lesion beyond a fourth, must be construed to mean an extra judicial sale, and not one ordered by a court of justice, at which strangers as well as heirs may become purchasers for the purpose of affecting a partition.
Ibid.
13. A judicial sale of a lease imposes upon the purchaser the obligation of paying the price of adjudication to the vendor, and also that of paying the rent accruing after the sale to the lessor, according to the terms of the lease.
D'Aquin v. Armant, 217.
14. Where a sale is made *à la folle enchère*, and the property is adjudicated to the vendor himself, he can not recover from the purchaser at the first sale the deficiency in the price.
Ibid.
15. When property is sold at Sheriff's sale, and the party causing the sale to be made is not able to put the purchaser in the enjoyment of the premises, nor of the rents, he has a right to refuse payment of the price.
Hernandez v. His Creditors, 337.

SALE, JUDICIAL (*Continued*).

16. At a sale of succession property, a creditor of the succession cannot tender, in payment of the price of property adjudicated to him, the claims which he may have against the succession. *Pendarvis v. Wall*, 449.
17. The property of *insolvent corporations*, when sold by a commissioner for cash, must be appraised, and bring two-thirds of its appraised value, as in case of property sold under execution. *Hyde v. Mississippi Sound Company*, 492.
18. A commission to sell property of minors issued by the Clerk will not supply the place of the necessary order of sale; nor will it be inferred from such commission that a decree of sale existed, although it recites that it was issued "in pursuance of the order of the District Court." *Robert v. Brown*, 597.
19. The facts that a family meeting was convoked, and advised the sale, and that a petition had been presented to the court to homologate the proceedings, will not cure the nullities arising from the sale of property made under such commission. *Ibid.*
20. The prescription of five years, established by the Act of 1855, to cure the informalities growing out of public sales, cannot apply to a case where there is a total want of authority to sell; it cures only those informalities which may occur in the execution of a decree, or other authority to sell. *Ibid.*
21. Irregularities and informalities, which precede the decree of a Probate Court ordering the sale of the property, to pay the debts of the succession, cannot render the decree of the court and the sale under it null and void. *Succession of Gurney*, 622.
22. When a court has jurisdiction, its decree protects the purchaser at a probate sale, from all informalities which may have preceded it, in the absence of any charge, or proof of fraud, even though the purchaser be the administrator, or one of the heirs-at-law. *Ibid.*
23. When property is sold under execution, the adjudication is made without reference to the amount of legal and judicial mortgages to which the property may be subject. *Young v. Hays*, 654.
24. A forced sale of property, made under execution of a judgment, secured by a judicial mortgage, does not discharge concurrent judicial mortgages. *Ibid.*

See HUSBAND AND WIFE—*Ruys v. Babin*, 95.

See BANKS—*Haynes v. Pipes*, 248.

See WARRANTY—*DeLoach v. Elder*, 662.

See PRESCRIPTION—*Louaillier v. Castille*, 777.

SEIZURE AND SALE.

1. The authority of an attorney-at-law is presumed, and an affidavit to obtain an order of seizure and sale, made by him in the absence of his principal, is sufficient. *Simpson v. Lombas*, 103.
2. The delay within which a suspensive appeal may be taken from an order of seizure and sale is fixed by Article 525 of the Code of Practice, and, as amended, is, in the country, fifteen days, excluding Sundays. *Lombas v. Robichaux*, 105.

SEIZURE AND SALE (*Continued*).

3. The delay commences to run from the date of the service of the notice of the order of seizure and sale, which is notice of judgment to the possessor of the hypothecated property. *Ibid.*
4. Parties against whom executory process is issued for an amount which exceeds in some particular the sum shown to be due by the documents filed, ought to address themselves to the Judge who issued the order, to have the error corrected, instead of making such error the pretext for an appeal involving vexatious delays. *Weems v. Ventress*, 267.
5. A promissory note not transferred by endorsement and delivery in the usual mercantile mode, is subject to seizure, under the rule which governs the sale of movables not accompanied with delivery. *Lassiter v. Bussy*, 699.
6. The doctrine of notice is not applicable to the sales of personal or movable property, and the creditors may seize and sell when there is no delivery of possession, although informed of an agreement to sell. *Ibid.*

SERVITUDE.

1. Two lots adjoining each other were sold at public auction according to a figurative plan exhibited at the time, and referred to in the acts of sale which were executed, pursuant to the adjudication; this plan represented an alley way running across the rear of both lots—*Held*: That although the sale conveyed the soil of the alley, which was requisite to make out the depth given to the lots in the title, a right of way was established in the alley as a servitude. *Cahill v. Connelly*, 280.

SEQUESTRATION.

1. To obtain a sequestration, both an affidavit and bond are required, and the lawmaker has made no exception in favor of negroes held in slavery, who may sue for their freedom. *Logan v. Hickman*, 300.
2. Where a Constable has property under seizure, he cannot be deprived of possession by a writ of sequestration, even by a superior court. The proper mode of procedure is by injunction. *Twitty v. Clarke*, 503.
3. A sequestration obtained on the ground of the plaintiffs apprehension, that the slave sued for, will be removed out of the jurisdiction of the court, cannot be set aside by proof of the defendant's long residence in the parish and possession of ample means. *Boatner v. Wade*, 695.

See PRACTICE—*Sharp v. Bright*, 390.

SHERIFF.

1. A deputy Sheriff who has not made the service of a petition and citation, or other proceeding, has no authority to make the return. *McKnight v. Connell*, 396.
2. Where a Sheriff acts as syndic of an insolvent estate, he acts in his official capacity, and the parties in interest, who have been injured by his acts or omissions, when acting in such capacity, have the right to hold all his sureties on his official bond liable for the injuries they may have received. *Succession of David*, 730.

SHERIFF (*Continued*).

3. When the Sheriff's official bond has been recorded, it operates as a mortgage upon the property of the Sheriff from the date of its registry.
Ibid.
4. The law grants this mortgage for the protection of private individuals as well as the State, who may be injured by the acts of the Sheriff.
Ibid.

See PRESCRIPTION—*Fuqua v. Young*, 216.

See COSTS—*Parker v. Robertson*, 249.

See EXECUTION—*Zimmerman v. Barichy*, 520.

SIMULATION.

See SALE—*Gleisses v. McHallen*, 500.

Dyke v. Dyer, 701

SLAVES AND STATU LIBERI.

1. A slave cannot be a party in any civil action, either as plaintiff or defendant, except when he has to claim or prove his freedom. C. C. 177.
Jamison v. Bridge, 31.
2. As emancipation is now prohibited in this State, a slave cannot prosecute a suit for his freedom. Session Acts 1857, p. 55. *Ibid.*
3. The authority given by law for the use of fire-arms by freeholders, in the arrest of slaves under certain circumstances, is not to be extended beyond the express terms of the statute. *McCutcheon v. Angelo*, 34.
4. A slave claiming to be a *statu liber*, whose master is a resident of another State, cannot have her rights judicially investigated in this State. She should resort to the courts of the State in which her master is domiciliated.
Brown v. Raby, 41.
5. Under our present law no slave can be emancipated, and a slave's right to freedom cannot be established here according to the laws of another State.
Ibid.
6. Proof that the owner of a slave intended he should be free, and that neither he nor his heirs after his death claimed his services, will not entitle the slave to his freedom, it not being shown that he had ever enjoyed his liberty for the space of ten years. *George v. Demouy*, 145.
7. The child of a *statu libera* who, by Art. 196 of the Code, is to become free at the time fixed for the *énfranchisement* of the mother, requires the consent of the public authorities to her emancipation, and since the Act of the Legislature of 1857, the emancipation cannot be effected.
Pauline v. Hubert, 161.
8. It is no objection to a slave's right to manumission by act *inter vivos* or *mortis causa*, that she was the concubine of her owner at the time the act was passed. *Price v. Ray*, 697.
9. An acknowledgment by the father of natural children by his own slave, has no legal or binding effect. *Ibid.*
10. Where a will was made prior to the passage of the Act of 1857, prohibiting the emancipation of slaves, in which a slave was manumitted by his master—*Held*: That under the will the slave acquired only an *inchoate right* to his freedom, to be perfected in accordance with the existing laws and

SLAVES AND STATU LIBERI (*Continued*).

regulations upon the subject; and that when the slave, who had acquired this right under the will, did not perfect it under the existing laws, he cannot be a party to the suit, nor have his rights under the will enquired into, since the passage of the Act of 1857. *Ibid.*

11. The law does not justify any one in killing a slave, while in the act of committing a theft on his premises; and any person so killing a slave will be bound to the owner for his value. *Gardiner v. Thibodeau*, 732.
12. The policy of the State since the Act of the Legislature of the 6th of March, 1857, prohibiting the emancipation of slaves, is that the slaves within her borders shall remain slaves, and there is nothing unconstitutional in such legislation. *Deshotels v. Soileau*, 745.
13. Where the testator, by will, directed his residuary legatees, in case his slaves could not be emancipated with permission to remain in the State, to remove them from the State, *after having had them emancipated*, and the Legislature, before the consummation of the emancipation of the slaves according to the forms prescribed by law, passed an Act prohibiting the emancipation of slaves—*Held*: That the slaves had no vested right to freedom under the will, until the formalities required by the laws previously existing, for consummating the emancipation, had been complied with. *Held*, also: That the legacy to the slaves of their freedom, lapsed by the Legislature having passed a law rendering it impossible for them to be emancipated, and they became the property of the heirs-at-law of the testator. *Ibid.*

See PRACTICE AND SEQUESTRATION—*Logan v. Hickman*, 300.

See CRIMINAL LAW—*State v. Peter*, 521.

State v. Charles, 649.

See JURISDICTION—*Hardy v. Voorhies*, 776.

STATUTES.

1. The 34th section of the Act of the Legislature of 1857, which requires that before the sale of school lands there shall be an appraisement, and that in no case shall they be sold for less than one dollar and twenty-five cents per acre, means that the land shall bring its appraised value, but that in no case can it be appraised at less than \$1 25 per acre.

School Directors v. Coleman, 186.

2. The repeal of a repealing law does not revive the first law, unless it be so particularly expressed. C. C. 22 and 23. And the same rule may be laid down as to the amendment of laws, which is but a partial repeal.

Tallamon v. Cardenas, 509.

3. Laws in the restraint of trade, or the alienation of property, are strictly construed, and are never extended to cases not within the express will of the law maker.

Richardson v. Emswiler, 658.

See PRESCRIPTION—*Stumders, v. Carroll*, 27.

See CRIMINAL LAW—*State v. Adams*, 620.

SUCCESSIONS.

1. When the widow in the community, and natural tutrix of her minor children, having the possession and administration of the property of her deceased husband's succession during her life, enters into a partnership

SUCCESSIONS (*Continued*).

with the heirs who are of full age, and slaves and other property of the succession are employed and used by the partnership—*Held*: That the minor heirs were not, and could not be made by their natural tutrix, members of the partnership, and consequently, after her death, have the right to sue for, and recover from the surviving partners, a debt due them by the partnership, before a final settlement and liquidation of the partnership affairs. *Held also*: That the hire of the slaves was a debt due the succession by the partnership, and that the minor heirs are entitled to recover from the surviving partners the portion of the hire of the slaves due them, less the portion which was extinguished at the death of their mother by confusion, on their becoming her beneficiary heirs.

Cuillé v. Gassen, 5.

2. An heir who purchases at the sale of the hereditary effects is not obliged to pay the surplus of the purchase money over his portion of the succession, until the portion has been definitively fixed by a partition.

Mavor v. Armant, 181.

3. A judgment against the administrator of a succession recognizing the claim of a creditor, and ordering it to be placed on a tableau of distribution, is binding upon the heirs, unless obtained through fraud or error.

Sturges v. Sheriff, 231.

4. The District Court of the parish where a succession has been opened and is in due course of administration, has exclusive jurisdiction of a claim against the succession.

Hereford v. Babin, 333.

5. In a suit against the curator of a succession, in which a question of title between the succession and a third party is involved, the attorney of absent heirs has no authority to file an answer, making a different issue from the one presented by the answer of the curator.

Surgi v. Calder, 336.

6. Property found among that of the deceased is properly inventoried among his effects.

Waterhouse v. Bourke, 358.

7. The true owner thereof can claim the proceeds only of sales of his property made by an administrator in good faith.

Ibid.

8. Having neglected to claim his property both before and at the time of the inventory, there was nothing to prevent the administrator from selling them according to law. If the requisitions of law, in making the sale, were not complied with, the creditors alone would have recourse against the administrator, if they suffered by his unlawful act. The owner of the property would have no right to complain, particularly when he suffered no damage thereby.

Ibid.

9. An *ex parte* decree, ordering property to be inventoried, is only *prima facie* evidence of title in the decedent.

Wilson v. Smith, 368.

10. The tutrix and widow in community administers the succession only so long as it is not entrusted to an administrator; and when her power over the succession is superseded by the appointment of an administrator, in order to bind the succession for a debt, the new representative of the same should be made a party.

Saloy v. Cheznaidre, 567.

SUCCESSIONS (*Continued*).

11. A legacy of \$15,000 was made by the testatrix, *E. R. W.*, to the minor children of her son *J. W.* The legacy vested by the testatrix's death while the father and mother of the minors were both living, and a contract was entered into between the father of the minors and one of the forced heirs, who had bought out the whole estate, by which a term of ten years was accorded to the heir to pay the legacy due to the minors, on his obligation to pay the amount with eight per cent. interest, payable semi-annually, secured by mortgage. *Held*: That the children of *J. W.*, on becoming of age or being emancipated, were not divested of their rights by a settlement so made, and could exercise their claims against the succession of *E. R. W.*, unless they chose to avail themselves of the stipulations contained in the settlement with their father.
Lewis v. Williams, 625.
12. A legatee who is not a *forced heir* cannot demand collation, nor even if made derive any benefit from it in settling his rights as legatee under the will.
Ibid.
13. When a person dies leaving property in two or more States or countries, his property in each State is considered as a separate succession for the purposes of administration, the payment of debts and the decisions of the claims of parties asserting title thereto. And when the property consists of immovables or slaves, it may be considered as a separate estate for the purpose of inheritance.
Atkinson v. Rogers, 633.
14. The beneficiary heir cannot stand in judgment for the succession.
State v. Leckie, 641.
15. Where the succession is accepted with the benefit of inventory, the appointment of an administrator becomes necessary, except when the heirs are all minors represented by a tutor, which case is made an exception to the general rule, the tutor having the right to administer, if the creditors do not require the appointment of an administrator.
Ibid.
16. The appraisalment of notes and accounts in the inventory of the effects of a succession, is required by law.
Succession of Pool, 677.
17. An administrator is not bound to attempt the collection of *bad debts*.
Ibid.
18. Where notes and accounts due the succession are numerous and small in amount, and constitute, as it were, a mass of *bad debts*, the discretion of the Judge of Probate, in ordering their sale at public auction, will be considered as legally and properly exercised.
Ibid.
19. The misnomer in the petition for administration of a succession, by calling it a vacant one, will not affect the proceedings which have been regularly conducted as in a succession not vacant, and administered with the benefit of inventory.
Ford v. Newcomer, 706.
20. Although a judgment of homologation, recognising the verity of claims set up against the succession, may not be technically, as to the heirs, *res judicata*, yet it constitutes *prima facie* proof, and imposes upon the heirs the burden of establishing fraud and deception in obtaining it.
Ibid.
21. A judgment creditor of an estate cannot sustain a petitory action against one who possesses property alleged to belong to the succession, when there is no administrator to whom delivery of possession of the property can be made.
Louaillier v. Castille, 777.

SUCCESSIONS (*Continued*).

22. The appellate court will judge from the evidence, of the value of the services rendered by the attorney of the succession.
Succession of Hughes, 863.
23. The expenses of litigation between the heirs of an estate as to their respective rights, cannot be made a general charge against the succession.
Ibid.

See MORTGAGE—*Michel v. Delaporte*, 91.See JURISDICTION—*Smith v. Adams*, 409.See SALE, JUDICIAL—*Succession of Gurney*, 622.See EXECUTORS AND ADMINISTRATORS—*Hicks v. Weems*, 629.*Lobit v. Castille*, 779.See PRINCIPAL AND SURETY—*Succession of Twibill*, 645.See ATTACHMENT—*Cheatham v. Carrington*, 696.

SUPREME COURT.

1. A re-hearing will not be granted when the evidence relied upon to support the application is only to be found in a different transcript from that of the appeal, which the parties had agreed might be referred to, but to which, by its title or number, no reference was made in the argument of the cause.
Succession of Broom, 67.
2. It is the settled practice of the court not to notice in applications for re-hearing, points which were not made in the argument of the cause.
Ibid.
3. In a criminal case, the Supreme Court cannot assume jurisdiction over questions of fact decided by the court below on a motion for a new trial.
State v. Haase, 79.
4. The Supreme Court cannot inquire into the ruling of a District Judge in refusing to grant a continuance, when no bill of exceptions has been taken to such ruling.
Murphy v. Simonds, 322.
5. The physical and mental condition of the person, whose dying declarations are offered in evidence, is a question of fact over which the Supreme Court has no jurisdiction.
State v. Bennett, 651.

See PRACTICE—*Hiestand v. New Orleans*, 137.See JURIES AND JURORS—*State v. Burger*, 461.See EVIDENCE—*Powell v. Hopson*, 666.

SURETY.

See PRINCIPAL AND SURETY.

TAXES, TAX SALES AND TAX COLLECTORS.

1. The Article of the Constitution which declares that the Judges both of the Supreme and inferior courts shall at stated times receive a salary which shall not be diminished during their continuance in office, exempts the salary of a Judge from taxation.
New Orleans v. Lea, 197.
2. The defendant relying on a tax sale is bound to show not only the existence of an assessment, but also its legality.
Sutton v. Calhoun, 209.
3. Where the title of the owner of the land is of record, his name is required by statute, as descriptive of the land assessed, and an error in this respect is fatal to a title by a tax sale.
Ibid.

TAXES, TAX SALES AND TAX COLLECTORS (*Continued*).

4. It is necessary that the land assessed should be designated by its boundaries, and when the boundaries given are confused and erroneous, the assessment does not possess that particularity and certainty necessary for the validity of a tax sale. *Ibid.*
5. Parol evidence is admissible to show a misdescription in the act of sale of the land really sold, there being an error on the face of the act itself. *Ibid.*
6. Wharfage dues charged by a corporation, are not, properly speaking, a tax, like that which is levied for the support of government. *Schwartz v. Flatboats*, 243.
7. An assessment made under the Act of 1857, cannot be aided by the lien or privilege given by the Act of 1858. The Legislature intended to authorize a specific tax by the Act of 1857, a comparison of which Act with the previous Acts, shows that the term "*specifically on each and every acre*," was used in contradistinction to the *ad valorem* tax of former statutes. *Selby v. Levee Commissioners*, 434.
8. It is not necessary that the voters who elect the Levee Commissioners should be equally assessed. *Ibid.*
9. Equality of taxation and representation, in inferior jurisdictions, is not essential under the Constitution. *Ibid.*
10. A party cannot be relieved from the payment of assessments and taxes on the ground that there might be an outstanding title in some one else, it is sufficient that he claims and possesses as owner. *Ibid.*
11. Where lands are not benefited by the levees, they are not within the spirit of the Act of 1857, and should not be taxed to meet them. *Ibid.*
12. In a case where the formalities required by law for the collection of taxes in the city of Jefferson, appear to have been substantially complied with, and a sale of a lot of ground was made by the Sheriff upon a judgment obtained by a proceeding *in rem* against the property upon which the tax was due—*Held*: That the purchaser could not be dispossessed by the owner of the property at the time the tax was levied, on the ground that the property was erroneously assessed in the name of one who was not a proprietor. *Daily v. Newman*, 580.
13. Where taxes are erroneously assessed, it is the duty of the tax payer to have the tableau of assessment corrected, if he so desires. The error in the assessment is a matter of defence of which the tax payer must avail himself, and the complaint comes too late, if made after judgment, and a sale of the taxed property. *Ibid.*
14. Where, by an Act of the Legislature, the State remits a portion of the indebtedness of a Tax Collector, authorizing his bond to be cancelled on the payment of a fixed amount, it is a renunciation of the right to claim the interest at two per cent. per month allowed by statute in the nature of a penalty against defaulting Tax Collectors. *State v. Leckie*, 636.
15. When the sureties on a Tax Collector's bond obligate themselves, each for a specific sum, the State is entitled, in case the Collector becomes a defaulter, to a judgment against each surety for the whole amount for which he is bound, although more than the amount due the State by the principal in the bond cannot be collected from his sureties. *State v. Hampton*, 679.

TAXES, TAX SALES AND TAX COLLECTORS (*Continued*).

16. Under a bond of a Sheriff and Tax Collector, conditioned that he shall collect and pay over "all the State, mill and poll taxes, together with all fines," &c., according to law—*Held*: The surety is liable for the amount of licenses for which the Sheriff is defaulter. *Ibid.*
17. It is not necessary to put a Tax Collector formally in default, to enable the State to recover the two per cent. per month interest, which is the penalty by law for the non-payment of the taxes to the State by the Collector. *Ibid.*
18. In an action against a defaulting Tax Collector and the sureties on his bond, who are bound each for a specific sum, the case may be continued as to some of the defendants. *State v. Hampton*, 725.
19. The principal and sureties on a Tax Collector's bond cannot set up, by way of defence to an action brought on the bond, the fact that it had not been approved, or received by the proper officer, and recorded, as provided by law. *Ibid.*
20. The Act approved March 19th, 1856, entitled "*An Act to authorize the City of New Orleans to tax real and personal property*," is not repealed by the general repealing clause of the Act approved March 20th, 1856, amending the Act incorporating and providing a government, &c., for the City of New Orleans. *New Orleans v. Hart*, 803.
21. The formalities of assessment and collection of City Taxes, as prescribed by the Act of the 20th of March, 1856, did not apply to the taxes for that year, as the Act of 19th of March, 1856, authorized an assessment for the year which had not then expired, in accordance with its provisions. *Ibid.*
22. The meaning of the word *income*, under the Act of 19th of March, 1856, is money received in compensation for services, such as wages, commissions, brokerage, &c., and is totally different from the fruits of capital invested in merchandise, stocks, &c. *Ibid.*
23. The Act of 1856 makes no allowance for commissions or compensation to be paid by the tax payer to the Assistant City Attorney; the Act of 1853, which allowed him a commission of five per cent., has been repealed. *Ibid.*
24. A tax bill is not an open account; there is no provision of law fixing the period of prescription of a tax bill at five years. *New Orleans v. Locke*, 854.
25. By the Act of 1852, all suits for unpaid taxes due to the city are brought by filing in court the tax bill and citing tax payers by advertisement. The tax bill must be considered as the petition, containing all the demands to which the plaintiff is entitled by law, and consequently, in such a suit, eight per cent. interest under the statute must be allowed in the judgment, as if prayed for. *New Orleans v. Fisk*, 862.
26. The profits realised from the use of a cotton press, drays and slaves, in carrying on the business of a cotton press, are not subject to taxation as "income," under the 3d and 4th sections of the Act of the Legislature of 1856, authorizing the city of New Orleans to tax real and personal property. *New Orleans v. Fassman*, 865.

See NEW ORLEANS—*New Orleans v. Costello*, 37.

See APPEAL—*New Orleans v. Boudro*, 303.

Merriam v. New Orleans, 318.

See CONSTITUTIONAL LAW—*Wallace v. Shelton*, 498.

TRANSFER.

1. An agreement to transfer personal effects vests the property in the transferee, but the effect of the transfer is strictly confined to the parties to it until the actual delivery of the object.

Marshall v. Parish of Morehouse, 689.

2. Personal property transferred by contract, but not delivered, is liable in the hands of the transferee to seizure and attachment by his creditors.

Ibid.

3. An assignment without delivery is conclusive against the assignor and his legal representatives.

Ibid.

See EVIDENCE—*Edwards v. Daley*, 384.

See BILLS AND NOTES—*Rice v. Davis*, 435.

TRESSPASS.

See ACTION—*Gardiner v. Thibodeau*, 732.

TUTORS AND TUTORSHIP.

1. The mother wishing to contract a second marriage may, by the advice of a family meeting, be retained in the tutorship of her minor children on giving security, and her application may be acted on before the marriage is celebrated. Her rights in this respect are not impaired by the refusal of a previous family meeting to retain her in the tutorship without security.

Gaudet v. Gaudet, 112.

2. The surety on a tutor's bond cannot require that payments made by the latter to his ward, shall be imputed to the amount that may be due upon the bond, on a breach of its conditions. The doctrine of imputation of payments does not apply to such a case.

Brown v. Roberts, 259.

3. Where the tutor makes a surrender of his property, and the parties in whose favor the bond was executed, consent to, and vote for its sale on terms of credit, such sale is a granting of time, which will have the effect of discharging the liability of the surety.

Ibid.

4. The validity of a judgment confirming the mother as natural tutrix of her minor children, cannot be called in question collaterally.

Cailleteau v. Ingouf, 623.

5. The under-tutor of a minor may resign his office, without being compelled to allege and prove his excuses.

Under-Tutor of Walker, 631.

6. A judgment against the tutor upon the account of tutorship, does not conclude the tutor's surety, although *prima facie* evidence against him.

Fuselier v. Babineau, 764.

7. The surety on a tutor's bond is not liable for what came into the tutor's hands before signing the bond.

Ibid.

8. The tutor is bound to pay interest on all sums of money of the minor, which come into his hands.

Ibid.

See APPEAL—*Moodie v. Cambot*, 153.

See PARTITION—*Shaffet v. Jackson*, 154.

See JURISDICTION—*State v. Petit*, 565.

See SUCCESSION—*State v. Leckie*, 641.

See PRINCIPAL AND SURETY—*Elam v. Barr*, 671.

See MINORS—*Payne v. Scott*, 760.

Sanford v. Waggaman, 852.

See APPEAL—*Préjean v. Robin*, 788.

See PARTNERSHIP—*McMichael v. Raoul*, 307.



USUFRUCT.

1. Where an usufruct of community property is constituted by last will in favor of the wife, and there are no descendants, the usufructuary is compelled to give security according to Art. 552 C. C., unless it has been dispensed with by the terms of the will. *Succession of Cardona*, 356.

See COMMUNITY—*Saloy v. Chermak*, 567.

See DONATIONS—*Tillman v. Mosely*, 710.

WARRANTY.

1. In a sale of a slave mother and her infant child, where it appeared by the evidence that the child was only sold with the mother on account of its tender age, and added nothing to the value of the mother—*Held*: That the vendor was not liable in warranty for the value of the child, which his vendee had been compelled to pay as warrantor in a subsequent sale of both mother and child. *Underwood v. Lacapère*, 276.
2. Costs follow the judgment, and an exception to the rule cannot be made in the case of a warrantor called in to defend the title of his vendee, and who is decreed not to be liable for the return of any part of the price he had received. *Ibid.*
3. Where a slave has been purchased with warranty, and is afterwards sequestered while in the possession of a lessee, against whom suit is brought for his recovery, and immediate notice is given by the lessee to the vendee, who likewise gives immediate notice to the vendor, of the institution of said suit, with a request that he defend it, or furnish the vendee the necessary means for maintaining his title to the slave, and the vendor promises to defend the action himself, which he fails to do, and the suit goes by default against the lessee, if neither the vendee nor the vendor is a party to the suit, it is the fault of the latter, and as against his vendee he cannot protect himself by claiming, "that an eviction of property can only be on final judgment, where the vendor or vendee is a party to the suit, and where the title to the property is directly drawn in question." *Vienne v. Harris*, 382.
4. The vendor cannot enjoin the seizure and sale of the property of his vendee, when it is seized under execution as the property of a third person, on the grounds that his obligation in warranty may attach. *Kelly v. Wiseman*, 661.
5. In such a suit the question of title to property is involved, and it, therefore, partakes of the nature of a petitory action, which can only be maintained by the party in whom the legal title is vested. *Ibid.*
6. The vendor is only liable on this warranty for causes anterior to the sale, and if the vendee should be evicted without calling him in warranty, and he can establish the fact that he had a good defence, which he lost, in consequence of the neglect and failure of the vendee to call him in warranty, the vendee cannot recover from him. *Ibid.*
7. All warranties to which vendors are subject in private sales, exist against the heir, in judicial sales of the property of successions. *Deloach v. Elder*, 662.
8. The warrantor is not liable for counsel fees paid by the party calling him in warranty. *Williams v. Leblanc*, 757.

WARRANTY (*Continued*).

9. The warrantor is not liable for the fees of the attorney employed by the party evicted. *Late v. Armorer*, 826.
10. The warrantor cannot object to the admissibility of evidence regularly taken by commission, previous to his being made a party to the suit. *Ibid*.

See ATTORNEY AT LAW—*Sarpy v. New Orleans*, 311.

See APPEAL—*Scuddy v. Shaffer*, 569.

See EVIDENCE—*Jackson v. Hays*, 577.

See SALE—*Winn v. Brown*, 642.

See REDREPTION—*Faulk v. Hough*, 659.

WILLS.

1. The testatrix, *E. H.*, made a will and died in Louisiana, the place of her domicile. By her will she gave to one of her children the whole of certain immovable property situated in Jackson county, Mississippi, and one-third of the remainder of her estate. The balance of her estate she directed to be divided among her other four children. *Held*: That the right of the testatrix to make such a disposition of immovable property situated in another State, is to be determined by the *lex rei sita*.
Hughes v. Hughes, 85.
2. That the laws of Louisiana, the domicile of the testatrix, making her children forced heirs for a certain proportion of her estate, being in conflict with the *lex rei sita*, the latter must govern. *Ibid*.
3. *Held*, further, that an *express declaration* in the will, of the intention of the testator to give the one-third of the estate to one of the children as an extra part over and above the legitimate portion, was not indispensable, the intention being apparent on the face of the will. *Ibid*.
4. The instrument set up as a last will was in these words; "Due *Mrs. Sarah E. Andrews* the sum of two thousand five hundred dollars, payable to her order, out of the proceeds of my estate, after my death. New Orleans, June 15th, 1855. J. A. BEARD."—*Held*: That such an instrument being negotiable in its form, cannot be viewed as a legacy, for want of a legatee.
Succession of Beard, 121.
5. Where it was established that the plaintiff was the concubine of a married man, who executed an obligation in her favor, payable at his death—*Held*: That a *prima facie* case was created, which threw upon the plaintiff the burden of proving a legal consideration. *Ibid*.
6. The cause which hinders a testator from signing his name when he knows how to sign, must be a physical cause. The existence of such a mental cause as delirium, incapacitates the testator from completing the will.
Jackson v. Moore, 213.
7. A nuncupative will by public act is null, if dictated in a language not understood by one of the attesting witnesses.
Breaux v. Gallusseau, 233.
8. The want of capacity of one of the witnesses to attest what was done, could not be supplied by the testimony of the notary and the two other witnesses, that the dispositions of the will were explained by the notary to the witness, who was not able to understand them from the dictation of the notary. *Ibid*.

WILLS (Continued).

9. The testator provided for the emancipation of a number of his slaves as follows: "As soon as possible after my decease, I wish all my negroes freed that I will name, and sent to Pennsylvania, and bread and meat found them for one year, all at the expense of my estate." *Held*: That it was the intention of the testator that the negroes should be freed in this State, and then be removed to Pennsylvania, and that it was not competent for the court here to grant an order authorizing the executor to remove them and to pay the expenses of their transportation and maintenance, after the Act of March 6th, 1857, preventing their emancipation here.
Succession of Woodruff, 295.
10. Article 1481 C. C., which declares that "donations *inter vivos* or *mortis causa*, cannot exceed two-thirds of the property, if the disposer, having no children, leave a father or mother, or both," would clearly govern in cases where the ascendant, whether father or mother, was the sole heir at law to the inheritance.
Barbet v. Roth, 381.
11. Articles 899 and 900 which make the disposable portion three-fourths, apply to cases where the testator leaves other heirs who would be entitled to a share in the inheritance, in the absence of a will.
Ibid.
12. The right of action of an heir, to compel a partition of the immovables and slaves belonging to the succession, in order that his portion may be set off to him, as owner, is an immovable—and when such a right is conveyed by last will, the instrument must conform to our laws, or it cannot have any effect.
Weber v. Ory, 537.
13. Where such a right was sought to be conveyed by a will made in the State of Missouri, in these words: "*I do hereby give and bequeath, absolutely and unconditionally, to M. G. and to A. J., to have and to hold the same, unto them jointly and severally, that is to say, as joint tenants, so that all and singular, the property hereby devised and bequeathed shall, upon the death of either of them, the said M. G. and A. J., descend, pass and belong to the survivor of them, and to the heirs of such survivor forever,—Held*: That such a disposition is a conditional substitution prohibited by our law.
Ibid.
14. The formal probate of a will cannot be disregarded by parties claiming as heirs of the testator, but never in possession, and they cannot institute a petitory action without seeking to annul such probate.
Deslondes v. New Orleans, 552.
15. When heirs-at-law have once acquiesced in a will, by accepting some bequest under it, neither they, nor those claiming under them as heirs, are at liberty afterwards to contest its provisions or assert its nullity.
Ibid.
16. The will of A. C., made in the State of Mississippi, where he died, and where his estate was situated, contained the following clause: "*I give and bequeath to my grandson, White Turpin Petit, and his heirs lawfully begotten, all the balance of my estate, real, personal, and mixed, together with the rest and residue of which I may die possessed, to enure to and vest in the said White Turpin Petit, on the day on which he shall have attained the age of twenty-one years, and not before, and in the event of the said White Turpin Petit dying before he shall have arrived at lawful age, as aforesaid, and*

WILLS (Continued).

leaving no heir of his own body, or in the event of his death at any time thereafter, without lawful issue, then, and in such contingency or contingencies, I give, devise and bequeath, all the real and personal and mixed estate aforesaid, to Rebecca S. M. Wailes, daughter, and only surviving child of my brother, Leonard Covington, and wife of Benjamin L. C. Wailes, and to her heirs forever." Held: That such a clause in a will is a substitution prohibited by our laws, and that negroes forming a part of the bequest having been removed to this State and sold here before the happening of the contingency, by which the title was to vest in the testator's niece, the title of the purchaser here could not be disturbed.

Wailes v. Daniell, 578.

17. An heir-at-law may sue in our courts for the recovery of immovable property, and its revenues, even when his ancestor, who was domiciliated in another State, had made a will which had been probated, and ordered to be executed in a foreign jurisdiction, and which here may not be valid and sufficient to defeat his inheritance. *Atkinson v. Rogers*, 633.

18. If immovable property in this State is in the possession of a foreign executor, and a testamentary disposition has been made of it, not in accordance with our laws, the legal heir may sue such executor directly for its recovery in the courts of this State, and is not obliged to resort to the tribunals of the testator's domicil, to ascertain the validity of the disposition intended to deprive him of his right to immovable property within our jurisdiction. *Ibid.*

19. Where a nuncupative will under private signature is made, out of the presence of the witnesses, the testator must distinctly declare, in the presence and hearing of all the witnesses necessary in this form of testament, that it contains his last will. *Babineau v. Leblanc*, 729.

See USUFRUCT—*Succession of Carlota*, 356.

See SUCCESSION—*Lewis v. Williams*, 625.

See SLAVES—*Price v. Ray*, 697.

Dahotels v. Solleau, 745.

WITNESS.

1. Where the answer of a witness is not responsive to the question asked, or is a voluntary statement made by him, the court may order it to be stricken out. *Roquest v. Boutin*, 44.
2. The son-in-law of one of the parties to a suit is a competent witness. The interest of the mother of the witness in the property in dispute, as belonging to the marriage community, she not being a party to the suit, is too remote to exclude her son's testimony. *King v. Neely*, 165.
3. A witness may be permitted to refer to accounts or memoranda made by himself to refresh his memory. *Chiapella v. Brown*, 189.
4. A witness cannot be permitted to state his belief as to the correctness of an account, he must testify to his knowledge of facts and not to his belief of them. *Succession of Penny*, 194.
5. A witness is properly excluded on account of interest, where he has a hope of gain, although it be uncertain whether any advantage can arise to him, even if the decision be favorable. *Gilkinson v. Sgt. Scotland*, 417.

WITNESS (*Continued*).

6. In a cross-examination of a witness for the State, the question was asked the witness "*if he was not anxious that the defendant should be convicted.*"
Held: That the question was a proper one, and might be asked to show bias on the mind of the witness, and that it was competent for the jury to decide from his answer to what extent his credibility may have been affected by it. *State v. Adams*, 620.
7. A defendant named in the petition, but not cited, is not in reality a party to the suit, so as to render him incompetent as a witness.
Taylor v. Hancock, 693.
8. A witness cannot be objected to on the ground of interest, because he is liable to the defendant as warrantor, if he has not been cited in warranty in the suit in which he is called to testify. *Arrowsmith v. Durell*, 849.

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